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No. 07-

IN THE

Supreme Court of the United States

CATHERINE R. MAFFEI, individually, and CATHERINE R. MAFFEI and MAUREEN, as trustees of the WALDO M. MAFFEI REVOCABLE TRUST, and EILEEN HANAFIN,

Petitioners,

v.

ROMAN CATHOLIC ARCHBISHOP OF BOSTON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the State Have a Sufficient State Interest in Insuring the Propriety of Gifts to Religious Institutions so as to Justify That the Same Laws Apply To These Gifts Which Pertain to All Other Charitable Gifts?

2. Does the Free Exercise of Religion Clause of the First Amendment of the United States Constitution Forbid a Civil Court from Considering the "Trust and Confidence" That May be Engendered in Congregants Solely by Virtue of the Clergy's Religious Authority, in Determining Whether the Congregant's Gift was Based upon a Breach of Trust?

3. Does the Free Exercise of Religion Clause of the First Amendment of the United States Constitution Prevent a Civil Court from Finding a Relationship of "Trust and Confidence" When the Archdiocese Requested its Parishioner on Three Occasions to Transfer Property for the Building of a Church and Promised to Dedicate the Church to the Memory of the Parishioner's Father?

4. Does the Free Exercise of Religion Clause of the United States Constitution Prevent a Civil Court, in Determining Whether there has been a Breach of the "Trust and Confidence", from Considering a Relevant Canon of the Code of Canon Law Issued by the Vatican?

PARTIES TO THE PROCEEDING

The names of all parties to the proceedings in the Court whose judgment is sought to be reviewed appear in the caption. There is no parent or subsidiary company of any party.

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OPINIONS BELOW

The Commonwealth of Massachusetts Supreme Judicial Court on May 25, 2007 issued its decision affirming the judgment of the Middlesex (Massachusetts) Superior Court which dismissed the Plaintiffs' Verified Complaint for Failure to State a claim. The decision of the Massachusetts Supreme Judicial Court is published in the Massachusetts Reports, 449 Mass. 235 (2007). The Plaintiffs filed a Petition for Rehearing. On July 24, 2007, the Supreme Judicial Court issued the amendments to its decision, and otherwise denied the Petition for Rehearing. The amendments to the Supreme Judicial Court opinion are noted in the decision of the Massachusetts Supreme Judicial Court, 449 Mass. 235 (2007). The entry of Judgment after Rescript was entered on the docket of the Middlesex Superior Court on July 30, 2007. The amended decision of the Massachusetts Supreme Judicial Court is attached hereto as Appendix 1a through 33a and the decision of the Middlesex Superior Court as Appendix 34a through 51a.

JURISDICTION

The entry of Judgment after Rescript was entered on the docket of the Middlesex Superior Court on July 30, 2007. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Petitioners bring this Petition as the Massachusetts Supreme Judicial Court dismissed the Petitioner's appeal by applying the First Amendment of the United States Constitution, the text of which is:

AMENDMENT I

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT

This case involves the restrictions imposed by the Free Exercise Clause of the First Amendment upon a civil action for breach of trust, as follows: (1) Can a Court consider the "trust and confidence" which a Congregant ordinarily reposed upon a member of the Clergy; (2) If not, does the Congregant have a relationship sufficiently identifiable from the general class of Congregants when the Clergy has contacted him on three separate occasions requesting that the Congregant make a specific gift; and (3) Can the Court consider a relevant provision of the Code of Canon law, where the provision is not in dispute and where the dispute between the Congregant and the Clergy has not been the subject of an ecclesiastical tribunal.

A. The Facts.

The Petitioners were all Parishioners of St. James the Great Church in Wellesley, Massachusetts, which was created by the Archdiocese on September 19, 1950 and which was suppressed by Decree of Suppression effective October 31, 2004. They are signatories to the

Appeal of the Suppression filed by the Parishioners, which is currently pending before the Vatican's Apostolic Signatura.

In the mid-1940's, the Roman Catholic Archdiocese of Boston had two Parishes in Wellesley: St. John the Evangelist Parish and St. Paul's Parish. The Pastor of St. Paul's Parish was Dr. Robert H. Lord, who remained as Pastor until his untimely death in 1954. Prior to becoming Pastor, he had been a Professor of History at Harvard University, an advisor to President Wilson at the Paris Peace Conference, a Professor and Vice-Rector at the Archdiocese's St. John Seminary, and a noted author.

There was a population increase in Wellesley and Natick, which is the municipality on its western boundary. Churches were overcrowded. Rev. Lord was in written communication with the Archdiocese about the need for a new Church to serve the Parishioners of western Wellesley and eastern Natick. The Archdiocese asked him to locate a site. Rev. Lord felt that the best site, and as he later wrote to the Archdiocese, the only site, was a tract of eight acres on Worcester Street (Route 9) in Wellesley owned by the heirs of the late James Maffei.

The late James Maffei and his wife, Angela, had emigrated from Italy. He founded Maffei Sand & Gravel, one of he first "ready mix concrete" pourers in the Eastern United States. In 1925, he purchased a tract of approximately eight acres on the eastbound lane of Route 9 in Wellesley (hereinafter "Maffei property" or "the land"). He used a portion for his gravel business

and held the remainder for development. He and his wife passed away in 1937 and 1943, respectively. As a result of their deaths, title to the property was owned by their six children, as tenants in common. The children were Catholic Parishioners and proud of their father.

One of their children, Waldo Maffei, was an extremely respected and successful member of the community. Rev. Lord on two occasions met with Waldo and his wife, Catherine, in the living room of their Natick home. Rev. Lord requested that the family donate a portion of the property to the Church. Waldo checked with his four brothers and his sister, Mary Maffei, and declined. The Maffei sons, other than Waldo, desired to receive money for their interests.

The Archdiocese had a committee which would inspect and approve proposed sites for a new Church. In the spring of 1946, the Archdiocese committee inspected and approved a portion of the Maffei property as a site for the new Church.

Rev. Lord met with Waldo and Catherine a third time. He proposed that the Church be named, "St. James", after James Maffei. Rev. Lord assured them that the land would forever be used as a Church in tribute to James Maffei. Waldo contacted his brother and sister, who all now agreed to transfer the property, due to the promise to use the property as a Church as a tribute to their father, although the four brothers each also desired to receive $3,000 for each of their interests. Waldo contacted Rev. Lord and told them how much they appreciated the Archdiocese promise to name the Church after James Maffei, but that the four brothers

wished to each receive $3,000. Rev. Lord understood that Waldo Maffei and his sister, Mary, would not be receiving any money for the transfer of their interests. Waldo also assured Rev. Lord that he would be both a founding member and supporter of the Church, both financially and by his personal services. Waldo expressed to Rev. Lord his family's appreciation that the Church be a tribute to James Maffei. Rev. Lord understood that the Maffei family's agreement to transfer the property was based on the understanding that the land would forever be used as a Church as a tribute to James Maffei.

On September 16, 1946, Reverend Lord wrote to the Chancellor and told him that the best site, and indeed the only site, for the new Parish was the Maffei property. He said that "after protracted negotiations" the Maffei heirs had fixed their price at $12,000, or $1,500 an acre, that comparable prices were $2,000 to $2,400 an acre, that the Town of Wellesley had recently paid $2,200 for an acre adjacent to the Maffei land; and that Rev. Lord's advisor, a member of the Wellesley Planning Board, had agreed that $1,500 was a "really cheap price." He also said that the Maffei family had promised a gift of $100 towards the building of the Church. In fact, the Town of Wellesley in 1944 had purchased a 38,330 square foot tract on Route 9 for $3,500.

Rev. Lord's letter of September 16, 1946 requested the Archdiocese Chancellor for authorization to purchase the Maffei land for the sum of $12,000. The Chancellor, by his return letter of that same date, authorized the purchase of the property for the sum of $12,000 and directed Rev. Lord to contact the Archdiocese's lawyer to accomplish the transfer.

Although the Maffeis had hired an attorney to prepare the legal work with respect to the estate of their parents, they did not hire an attorney to prepare, or review, the transfer of the Maffei property to the Archdiocese. Waldo Maffei never told Rev. Lord the Maffeis were hiring an attorney, nor did Rev. Lord ever advise the Maffeis to hire an attorney. No Purchase and Sale Agreement was prepared. Rev. Lord told Waldo Maffei that the Archdiocese would prepare the Deed. The Maffeis did not hire an attorney.

Rev. Lord was the only person with whom the Maffeis dealt with respect to the transfer of the Maffei land. The Maffeis were never introduced to any other official of the Archdiocese nor did they deal with any attorney for the Archdiocese.

The Maffeis, in their Verified Complaint which they filed to commence their action in Middlesex Superior Court, averred that while Rev. Lord understood that the Maffeis were transferring their land on their understanding that the land would be used as a Church in the memory of James Maffei, Rev. Lord also understood that the land, if conveyed by outright deed, would be property owned by the Archdiocese. The Maffeis further averred that it was likely that Rev. Lord also knew that the property, even after a Church was constructed, would be subject to the Canonical process of closure and suppression, but that Rev. Lord did not advise the Maffeis that the Church might someday be subject to this process. The Archdiocese, in its Answer, responded that it had insufficient personal knowledge to admit nor deny these allegations.

The Maffeis, in their Verified Complaint, also averred that if they had known that there was any chance that the Archdiocese could close the Church to be constructed and upon closure the property would then be owned by the Archdiocese for possible sale, the Maffeis would not have agreed to transfer their land.

Rev. Lord knew that Waldo Maffei was relying on the Archdiocese to take all actions necessary to live up to its assurance that the property would forever be used as a Church in the memory of James Maffei.

The Maffeis in their Verified Complaint, alleged that they had reposed trust and confidence in Rev. Lord, which they contend is born out by the following:

(1) The Maffeis were Catholic Parishioners and he had a position in which trust was reposed;

(2) Rev. Lord knew the Maffeis were transferring the property for significantly less than its fair value;

(3) Rev. Lord knew that Waldo and his sister Mary were each receiving no money, and were agreeing to the transfer because the Church was to be named after their father;

(4) Waldo was agreeing to be a founding Member of the Church and to contribute to its construction, and Rev. Lord presumed that Waldo and his family, who ever very well respected, would help sustain the Church;

(5) Rev. Lord knew that the Maffeis were not hiring their own counsel, based on their trust and confidence that Rev. Lord and the Archdiocese would be solemnly bound to fulfill the promise, regardless of the language of any deed; and

(6) Rev. Lord knew that the Maffeis had absolutely no knowledge of Canon law, including the authority of the Archdiocese to suppress a Church.

The Deed of the Maffei property is dated December 19, 1946. Rev. Lord brought the deed to the home of Waldo and Catherine Maffei. The deed simply stated that the transfer was for, ". . . consideration paid", the amount of which was not stated. The Maffei heirs signed the deed on the kitchen table. The Notary Public, Mary Kinsman, lived across the street from James Maffei and notarized the deed for no consideration. Catherine Maffei and the other spouses signed the deed to release curtesy rights. The Maffeis and their spouses signed the deed on the understanding that the property would be used "forever" as a Church and a tribute to James Maffei; if they understood that there was a possibility that it would not, they would not have signed. While Catherine Maffei believes that Rev. Lord did not intend that the Church ever close, she feels that he should have informed them of the possibility of suppression.

Similar to Rev. Lord's promise to Waldo Maffei that Maffei property would forever be a Church in the name of James Maffei, the Parishioners of St. Jeremiah's Church, in the Town of Framingham, which is on the western boundary of Natick, alleged in their action in

Middlesex Superior Court, that at approximately this same time the Moynahan family of Framingham contributed the funds to build St. Jeremiah's Church, specifically to establish a Church for the people of Framingham with the proviso the Church be named after their father, Jeremiah Moynahan, and that the Archdiocese did name the Parish after their father.

The Archdiocese established the Church at the Maffei property and, in 1950, established "St. James Parish." Waldo Maffei was a founding member. The new building was constructed in 1958. The Parishioners paid for the construction. Waldo Maffei contributed $10,000 for the construction of the marble altar at the new Church, which bears the plaque, "Gift of Waldo Maffei and Family."

Waldo and Catherine Maffei were lifelong supporters of the Church. During the construction of the Church, Waldo provided advice as to where to locate the Rectory; donated pledges for the building; supplied equipment to dig the foundations of the Church and rectory; and donated employees, as necessary, during construction. After the Church was built, he donated financially; he plowed and sanded the Church parking lot until 1990; and provided trucks and men for paper drives. He took care of "odd jobs." In the late 1950's or early 1960's, the Pastor asked that Catherine form the Women's Guild, which she did. She always served on the Board of Directors and also served one term as President.

In approximately 1997, the Archdiocese appointed Reverend George Vartzelis ("Rev. Vartzelis") as Pastor. In 1999, the local weekly paper reported that the

Archdiocese had a list of Parishes to close which included St. James. Shortly thereafter, Rev. Vartzelis said at Mass that this was not true. The Plaintiffs allege in the Verified Complaint that the Archdiocese did not inform Rev. Vartzelis of the possibility of closing St. James.

The Archdiocese knew that Rev. Vartzelis, as Pastor, would need to request funds to finance the Church, and that it was likely he would tell Parishioners of the need to support the Church.

In 2002, the Archdiocese had a "Promise for Tomorrow Fund", an Archdiocesan-wide capital and endowment campaign by which each of its 368 Parishes joined together to address the Archdiocese's capital, programmatic and ministerial needs. Each Parish had a "goal", or specific amount of funds to raise. The Archdiocese set a goal for St. James of $370,000. The Flier for St. James the Great Parish stated,

> . . . St. James has grown into a thriving community of faith that consists of almost 900 families . . .

and, later,

> In order to continue our mission as a Church and to reach out to the Catholic community, we must provide for the future.

On June 10, 2002, Rev. Vartzelis sent a letter to St. James Parishioners, making a separate request for $35,000 for refurbishing the Church,

> . . . to keep it as good as it needs to be and was we all want it to be now and for the future.

The Archdiocese knew that Rev. Vartzelis was urging Parishioners to contribute to the upkeep and maintenance of the Church, and that the Parishioners likely would not give if it was represented that the Church could potentially close.

The Statement of Receipts and Expenditures of St. James the Great Parish for the fiscal year July 1, 2000 to June 30, 2001 stated that St. James had receipts of $299,553.25, expenses of $281,903.03, and a transfer to the Archdiocese of $21,961.

Eileen Hanafin was a lifelong member and supporter of the Church who was at this time in her eighties. Rev. Vartzelis knew she was retired and a person of modest financial means and that a contribution of $35,000 was a considerable sacrifice for her to make. Eileen Hanafin had no idea the Church was going to close and she presumed the Church would remain open. She discussed her possible donation of $35,000 with Rev. Vartzelis. He asked her if she wanted the donation listed in the Bulletin and she said she did not. He responded that her recently deceased brother, Gerald, had done a great deal for the Church and that she should make a donation in his memory. She agreed and the Bulletin listed the gift as made in his memory. She made the donation based on her faith that the contribution would help maintain the

Church, "... now and in the future." If she had known the Archdiocese was giving any consideration to closing the Church, she would not have made the contribution.

Waldo Maffei died on January 13, 2003. Rev. Vartzelis presided at the funeral. At the time of the funeral, Rev. Vartzelis discussed with Catherine Maffei the possibility of establishing a scholarship in his name as a lasting remembrance. They agreed and established the Waldo Maffei Scholarship, which would annually provide two graduating high school seniors, one from Wellesley and one from Natick, each with a $500 college scholarship. At Waldo's funeral, Rev. Vartzelis told Catherine, "There will always be a St. James the Great Church." The Defendant, in his Answer, stated it had insufficient information to admit or deny these averments.

Rev. Vartzelis's term as Pastor ended a few months later and he retired. St. James was in a Cluster of Parishes, the Wellesley-Weston Cluster, which also included St. John the Evangelist and St. Paul, both of Wellesley, and St. Julia of Weston. The Pastor of St. Paul was Rev. Robert Fitzgerald, who was also the head of Archdiocese Clergy Personnel. After the retirement of Rev. Vartzelis, two of the Cluster Parishes, St. James and St. Julia, did not have Pastors. Rev. Fitzgerald chose a Pastor, which has a six-year term, at St. Julia. He named Rev. Daniel Crowley as Administrator, which does not have a fixed term, at St. James. Rev. Fitzgerald told Rev. Crowley that he was only naming him as an Administrator because he was not sure how long St. James would stay open.

In early January, 2004, the Archdiocese had each Cluster recommend one or more Cluster Parishes to close. The Cluster designated St. James as the most feasible to close, with the expressed proviso that the Cluster would be best off if St. James remained open. On October 5, 2004, then-Archbishop O'Malley issued the Decree of Suppression, effective October 31, 2004.

Rev. Vartzelis presided at one of the last Masses, after which Eileen Hanafin said, "Father, why didn't you tell us the Church was closing?" He responded, "I really didn't know it, Eileen." He was visibly upset.

The Parishioners of St. James, pursuant to Canonical Procedure, filed an Appeal of the Decree of Suppression. The Petitioners, as Parishioners, are Signators to the Petition. The first step of the Appeal was to Archbishop O'Malley. On November 10, 2004, he denied, the Appeal, stating, inter alia,

> The fact that my predecessor chose not to name Fr. Crowley as a Pastor, but rather as an Administrator shows that this parish has long been seen as a place that could potentially close . . .

The Canonical Appeal is now at the highest level of Canonical Recourse, the Apostolic Signatura in Rome, Italy. The Canonical Appeal involves the Suppression of St. James the Great Church. The Appeal to the Apostolic Signature does not request recourse for any of the claims filed by the Petitioners in the Middlesex Superior Court and with respect to which the Petitioners are filing this Petition for Certiorari.

Rev. Mark O'Connell serves as Assistant to the Moderator of the Curia for Canonical Affairs for the Archdiocese of Boston. The Archdiocese submitted his Affidavit in the Action of *Mary Akoury, et als., Plaintiffs vs. Roman Catholic Archbishop of Boston, Sean Patrick O'Malley, as Corporation Sole, Defendant*, Suffolk Superior Court No. 04-3803B. In his Affidavit, he stated, inter alia, that the Code of Canon Law is the Universal Law of the Church; the current Code of Canon Law was promulgated in 1983 and consists of 1,752 "Canons"; that the Church is divided into portions called "dioceses", each under the authority of a bishop; that a Church is a juridic person; and that once a juridic person is suppressed, the Canon law provides that its property [in that case, the "goods and obligations of St. Albert's Church in Qunicy] became goods and obligations of the Archdiocese of Boston.

In November, 2004, Archbishop O'Malley had stated that it was closing Parishes for a number reasons, which included its financial crises, one aspect of which was the need to raise funds to fund settlements of priest sexual abuse claims. He also stated that there was a shortage of Priests. The Archdiocese also stated that one determination in determining whether to close a Parish was the size of its Parishioner base. The Archdiocese sent Rev. O'Connell to discuss closure with Parishioners of St. Bernard's in Newton, which Archbishop O'Malley also announced he would close and which is located at a very lucrative property. St. Bernard's had a much larger Parishioner base than other Churches in its cluster which were not selected to close. Rev. O'Connell stated that the Church was too big and that the Archdiocese wanted to, ". . . get back to smaller Parishes" and that the Archdiocese had, ... plenty of Priests" and that the closings were not motivated by a shortage of Priests.

II. The Petitioner's Action and Decision of the Massachusetts Supreme Judicial Court.

The Petitioners filed their action in the Middlesex Superior Court on June 8, 2005. The Petitioners filed a Motion for a Lis Pendens and a Motion for a Speedy Trial and the Defendant Archdiocese of Boston ("Archdiocese") filed a Motion to Dismiss for Failure to State a Claim, pursuant to Rule 12(b)(6) of the Massachusetts Rules of Civil Procedure. On August 5, 2005, the Superior Court, Smith, J., allowed the Motion for a Lis Pendens Motion for a Speedy Trial, and denied the Motion for Judgment on the Pleadings. On the denial of the Motion for Judgment on the Pleadings, the Court made the written notation,

> . . . this complex matter needs to be addressed at the summary judgment level. Further the Court notes that the plaintiff relies on items and facts which are not part of the complaint, thus forcing this Court either to completely ignore the outside matters or to treat this motion as a motion for summary judgment. The defendant has leave to re-cast its motion to dismiss as a motion for summary judgment.

On its allowance of the Motion for Speedy Trial, the Court made the written notation,

> . . . however, this matter shall not be scheduled for trial until after the Court has ruled on the summary judgment motion the Court has invited the defendant to file.

On December 7, 2005, the Superior Court conducted the hearing on cross-motions for summary judgment. On March 27, 2006, the Superior Court allowed the Motion for Summary Judgment of the Archdiocese and denied the Motion for Summary Judgment of the Plaintiffs.

The Plaintiffs appealed and on July 21, 2006, the Massachusetts Supreme Judicial Court allowed the Plaintiffs' Motion for Direct Appellate Review. On July 25, 2006, the Massachusetts Supreme Judicial Court issued its decision, in which it stated that its review was "informed and limited" by bedrock principles of the First Amendment of the United States Constitution. By letter hand-delivered to the Supreme Judicial Court on June 8, 2007, the Plaintiffs requested the Supreme Judicial Court reconsider its decision, including numerous factual findings, which Plaintiffs contended were without support, and also including the Court's application of First Amendment principles. On July 24, 2007, the Supreme Judicial Court issued a decision, which involved amendments to the original decision. The Amendments dealt with removal of several of the factual findings, but the Court did not disturb its application of First Amendment principles.

The decision of the Supreme Judicial Court invoked First Amendment principles which it stated limited its review of the Plaintiff's claim, as follows:

(1) The Court said that, insofar as the plaintiffs' causes of action are predicated on the alleged fiduciary or confidential relationship between a member of the clergy and his congregants, the First Amendment prohibited the Court from

inquiry into any pastoral duties owed by the priesthood to its laity concerning matters of canon law (page 237, bottom paragraph); App. 3a.

(2) The First Amendment places beyond the Court's jurisdiction disputes involving church, "doctrine, canon law, polity, discipline, and ministerial relationships," and that among the religious controversies off limits to the Courts are promises by members of the clergy to keep a church open; (Page 243, first full paragraph); App. 12a.

(3) The First Amendment standards forbid consideration of the religious obligations, if any, of a clergy member to his or her congregants, or of the "trust and confidence" that may be engendered in congregants solely by virtue of the clergy's religious authority; (Page 244, first full paragraph); App. 14a-15a.

(4) The Court must also stand apart from questions of canon law; of whether a member of the clergy had any fiduciary, confidential or other duty to discuss with the plaintiffs the nature of property under canon law (Page 244, first full paragraph); App. 14a-18a.

(5) The Court may not inquire into the ecclesiastical authority of a member of the clergy to bind the Archdiocese by making oral promises about church property, may not examine the actual status or disposition of church property under canon law, and may not attempt to interpret any particular provision of canon law, because as a matter of constitutional law, these matters are beyond the Court's authority (Page 244, first full paragraph); App. 14a-15a.

(6) In disposing of the Maffei's contention that they reposed "trust and confidence" in Reverend Lord, the Court said that a ruling that a Roman Catholic priest, or a member of the clergy of any religion, owes a fiduciary-confidential relationship to a parishioner that inheres in their shared faith and nothing more is impossible as a matter of law (p. 249); App. 21a-22a

(7) The Court distinguished decisions in other jurisdictions which stated that one who acts in the capacity of a "spiritual adviser" over a donor has a confidential relationship to the donor that requires the Donor to justify any gift made to him or her by the donor, on the ground that these decisions predated the Supreme Court's jurisprudence, such as *Serbian E. Orthodox Diocese for the U.S. & Can. vs. Milivojevich*, 426 U.S. 696 (1976), and the Court's own decision of *Fortin vs. Roman Catholic Bishop of Worcester*, 416 Mass. 781, *cert. den.* 511 U.S. 1142 (1944), and the Court did not consider them weighty authority (Pages 249-250, footnote 24); App. 22a-23a.

(8) The Maffeis can not advance their claim of negligent misrepresentation on the ground that Reverend Lord had a duty to inform them of the possibility that the Church could be suppressed, because the Court can not consider Canon law providing for suppression. (Page 255, first full paragraph). App. 32a.

REASONS FOR GRANTING THE PETITION

The decision of the Massachusetts Supreme Judicial Court is in conflict with decisions of other State Court concerning whether the First Amendment prevents a Court from considering the "trust and confidence" which a Congregant reposes in a member of the Clergy in determining whether there has been a breach of trust with respect to the Congregant's gift. The decision also is in conflict with a decision of the Second Circuit Court of Appeals concerning whether a Civil Court can consider a tenant of a religious order, if the matter has not been submitted to an ecclesiastical tribunal.

It is also in the public interest for the Supreme Court to resolve whether the same laws apply to gifts made by Congregants to Religious Organizations as apply to gifts to other Charitable Organizations.

I. The Decision Conflicts with Other State Court Decisions Concerning the Court's Consideration which a Congregant May Repose in a Member of the Clergy.

Other state courts have ruled that the inherent trust between a Congregant and a member of the Clergy can be considered, to the extent that a gift or transaction between a donor and his/her Church carries a presumption of undue influence and that the burden is imposed upon a Spiritual adviser to prove that the donor was free from influence. *See Nelson vs. Dodge*, 68 A.2d 51, 57 (Supr. Ct. RI 1949). In *Corrigan vs. Pironi*, 48 N.J. Eq. 67, 23 Atl. 355 (1891), the Court of Appeals and

Errors of New Jersey considered a gift of land by an elderly, eccentric woman to a Priest. The Court stated;

> . . . The respondent was in point of religion a Roman Catholic, and the appellant a Priest of that order, the consequence being that a relationship existed between them which in a legal point of view is deemed confidential. In the presence of such a spiritual ascendancy, all gifts or benefactions from the subject of such an influence to the possessor of it have been frequently avoided on the grounds of public policy, and without any suspicion that fraud imposition of any kind had been practiced. Such a situation in itself naturally suggests the idea of a donor possessed with a general purpose, without thought or self-guidance as to the mode of execution, and ready to adopt without hesitation any suggestion on the subject. In such a pretense of thought, it is incumbent on the donee to show, not only that his own conduct has been fair and wholly unobjectionable, which has been shown in the case, but to show, further, that thee donor has not acted from the influence of an implicit confidence, rather than the exercise of her own reason. . . .

Corrigan, pp. 355-356.

The Court of Appeals of Maryland ruled that this principle is applicable not only to gifts, but also to contracts and conveyances for valuable consideration because, as a general rule, relief will be afforded in equity

in all transactions in which influence has been acquired and abused, in which confidence has been reposed and betrayed. The Court also ruled that for the Church or spiritual authority to sustain its burden that the power conferred by the relation was not abused, the donee must prove that the donor had either competent or disinterested advice, or had performed a not unreasonable act with knowledge of its nature and as a result of free exercise of independent will. *Farmer vs. O'Carroll*, 162 Md. 431, 160 A. 12, 17, 18 (Ct. Appls. Md. 1932). *See also Brown vs. Father Divine et als.*, 173 Misc. 1029, 18 N.Y.S. 2d 544 (Supr. Ct., Special Term, New York County, 1940).

The Massachusetts Supreme Judicial Court distinguished these cases on the basis that they preceded First Amendment decisions such as *Serbian E. Orthodox Diocese for the U.S. & Can. vs. Milivojevich*, 426 U.S. 696 (1976) (*See* Court's decision, pages 249-250 App. 22a-24a, at footnote 4), However, in a decision subsequent to this Court's decision in *Serbian E. Orthodox*, the District of Columbia Court of Appeals, in its decision, dated November 3, 1992, ruled that in determining whether there was undue influence in connection with a gift from a Congregant, the fact that there were threats of divine retribution from the pulpit could be considered, particularly where there were similar threats imposed upon the donor on a "one to one". The Court summarized the general First Amendment concerns, as follows:

> The Free Exercise Clause embraces two concepts-freedom to believe and freedom to act. *Cantwell vs. Connecticut*, 310 Mass 296,

> 303 (1940); see also *Employment Div. vs. Smith*, 494 U.S. 872, 877 (1990). The first is absolute, but in the nature of things, the second cannot be. *Cantwell*, supra, 310 U.S. 303-304. Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. *Reynolds vs. United States*, 98 U.S. 145, 166 (1879); see also *Smith*, supra, 494 U.S. at 877-879. To permit someone to engage in activities which would otherwise be proscribed by law, upon the ground that such conduct is required by his or her religion, would "make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself." *Smith*, supra, 494 U.S. 879, citing *Reynolds*, supra, 98 U.S. at 167. Accordingly, the right of Free Exercise of "does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes). *Smith*, supra, 494 U.S. at 879.

Roberts-Douglas vs. Meares, 624 A.2d 405, 423 (D.C. App. 1992).

In applying these principles , the Court stated that evidence of threats of divine retribution made to the congregation as a whole could be received and considered, particularly as there was also evidence of similar threats being delivered to the donor on a "one on one" basis. *Roberts-Douglas*, supra, at page 424.

II. The Decision of the Supreme Judicial Court Conflicts with a Decision of the Second Circuit Court of Appeals with Respect to a Court's Jurisdiction to Consider Ecclesiastical Law.

As previously stated, the Massachusetts Supreme Judicial Court stated that the First Amendment forbids consideration of disputes involving doctrines concerning church doctrine or canon law; that the First Amendment forbids consideration of the religious obligations of a clergy member to his or her congregants; and that the Maffeis could not advance their claim of negligent misrepresentation on the ground that Reverend Lord had a duty to inform them of the possibility that the Church could be suppressed. (Maffei decision, pages 243, 244 and 255). App. 22a-24a. This ruling, that the Court can not consider the principles of the religion, for any purpose, is in conflict with the interpretation of the First Amendment of the Second Circuit Court of Appeals. In its decision *Martinelli vs. Bridgeport Roman Catholic Diocesan*, 196 F.3d 409 (2d Cir. 1999), the Plaintiff was claiming that the sexual assault which he suffered from a clergyman was in violation of a fiduciary relationship which the Plaintiff had with the Diocese. The Second Circuit ruled that in determination of whether there was a fiduciary relationship, the First Amendment did not prevent the consideration of religious doctrines and practices, including evidence at trial that the Plaintiff was taught that the bishop is like a "shepherd" to his "flock" of parishioners, and testimony about the status and responsibilities of the bishop under Canon Law. The Second Circuit ruled that the First Amendment did not preclude the introduction of this evidence. The Second Circuit stated that the First Amendment does not

prevent Courts from deciding secular civil disputes involving religious institutions when and for the reason that they require reference to religious matters, and that while the First Amendment values are plainly jeopardized when litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice, that in this case the District Court had not made any decision for or against any religious doctrine or practice. *Martinelli, supra,* at pages 430 and 431.

The Second Circuit continued that where a person's beliefs are alleged to give rise to a special legal relationship between him and his church, the Court may be required to consider with other relevant evidence the nature of the person's beliefs in order properly to determine whether the asserted relationship in fact exists. The Second Circuit analogized the consideration of religious tenets to the admission of an out-of-court statement for a non-hearsay purpose,

> . . . Similarly, the proposition that a 'bishop is like a shepherd' to a 'flock of parishioners' cannot be considered by a jury to assess its truth or validity or the extent of the divine approval or authority, but may be considered by the same jury to determine the character of the relationship between a parishioner and his or her bishop.

Martinelli, supra, at page 431.

III. A Definitive Ruling by the Highest Court is Necessary to Determine Whether Donors to Religious Institutions Have the Same Rights as Donors to Other Charitable Institutions.

The Court should review the decision of the Massachusetts Supreme Judicial Court to resolve whether Donors who benefit religious institutions are entitled to require that the religious institution use their gifts for the intended purpose. To require that these donors have the same rights and causes of action as they would have if they had chosen to bestow their gift upon a non-religious charity would be totally consistent with the "ground rules" as to which religious institutions have generally represented they would comply. Religious institutions have requested and received favorable tax status under Internal Revenue Code Section 501(c)(3) so that the donors can deduct the contributions for either income tax or estate and gift tax purposes. As the religious institutions have requested governmental involvement as far as obtaining favorable tax treatment, the religious institutions can not complain that the gifts should not be held to scrutiny as far as the propriety of either the solicitation or use of the gifts is concerned.

Also, the Archdiocese of Boston was created by the Legislative Act of 1897 creating the Archdiocese as a corporation sole, Acts 1897, Chapter 506, Section 2 of which states:

> That said corporation shall be empowered to receive, take and hold, by sale, gift, lease, devise, or otherwise, real and personal estate of every description, for religious, charitable

> and burial purposes, and to manage and dispose of the same for the religious and charitable purposes of the Roman Catholic church, subject to the laws of the Commonwealth and to the terms of any trust set forth in any bequest, devise, deed or conveyance of any said estate, with such limitations as may by law govern any such trust, with full power, subject to the laws of the Commonwealth and the terms of such trusts, to convey the said estate by deed of mortgage fore the payment of money as well by deed absolute.

As the Archdiocese accepted the terms of this Act by incorporating as a corporation sole pursuant to the Statute, then the review of Gifts made to the Archdiocese pursuant to the statute, and in particular to determine whether the gifts are devoted to the "religious, charitable and burial uses" intended, is not excessive governmental interference.

The review of the decision of the Massachusetts Supreme Judicial Court is also necessary because there is a widespread concern that some religious institutions are suffering from financial problems and possibly utilizing gifts in a manner which is not intended. A sad example is the funding of the Priest Retirement by the Archdiocese of Boston. For decades, the Archdiocese has announced that the contributions to both the Christmas and Easter Mass collections would be devoted solely to the funding of the Retired Priests Pension and Medical Programs. However, the retirement fund is at a critical shortage, and the Archdiocese later disclosed that for

approximately twenty years the Pension portion of the program had not received any contributions. Given the holding of the Massachusetts Supreme Judicial Court, the donors could not contest the use of their donations, as the Court would prohibit the reference to solicitations made during the Masses. The decisions of the other states would not permit such a failure to apply the contributions as implied in the solicitations, and this Court should allow the Petition to rule whether the First Amendment requires this result.

Another instance of application of a Donor's gift for an unintended use is the appropriation of gifts and proceeds to fund the Priest Sexual Abuse settlements. In November, 2004, then Archbishop O'Malley stated in his discussion of the need for Parish Closings that there was a financial crisis, one aspect of which was the need to fund settlement of Priest Sexual Abuse. The Archdiocese has since stated that no funds from closings were directly used to pay settlements, but one must practically conclude that this is little more than an accounting nuance: as the Archdiocese had to fund $100,000,000 of uninsured Priest Sexual Abuse Claims, then this payment inevitably depleted the Archdiocesan funds, and its ability to fund other debts, by this amount. The Archdiocese obviously can not hope to raise funds directly from Parishioners to fund these settlements. For the Archdiocese to liquidate gifts previously made by unsuspecting donors to pay for what it can not raise from Donors directly is a very sad and unfortunate circumstance, and to interpret the First Amendment to block the attempts of unsuspecting Donors to seek recourse to require that their gifts be used as all had intended is both incorrect as a matter of law and worthy of review by the highest Court.

IV. The Massachusetts Supreme Judicial Court Erroneously Applied First Amendment Law in Its Dismissal of the Petitioners' Claims.

The Supreme Judicial Court's dismissal of the Petitioners' claims was a result of its interpretation of rulings of the U.S. Supreme Court, as preventing consideration of both (1) a member of the Clergy's representations to its Congregants and (2) the undisputed provisions of Canon law. The incorrect application of these principles resulted in the dismissal of the Petitioners' claims.

A. The First Amendment Does Not Bar Consideration of the Clergy's Solicitations.

The Freedom of Religion clause of the First Amendment embraces two concepts: the freedom to believe and the freedom to act. The freedom to believe is absolute, but the freedom to act is subject to regulation for the protection of society. *Cantwell vs. Connecticut*, 310 U.S. 296, 305 (1940). In *Cantwell*, the U.S. Supreme Court ruled that the power to regulate for the protection of society permitted a state, by general and non-discriminatory legislation, to regulate the times, places and manner of soliciting upon its streets, an d of holding meetings thereon, and in other respects safeguard the peace, good order and comfort of the community. *Cantwell, supra*, at page 304.

The Freedom of Religion Clause similarly does not limit the State, by application of its general and non-discriminatory laws, to regulate the solicitation of gifts and contributions to religious charities, particularly as

religious institutions have voluntarily involved the State in the donative process, by seeking favorable tax treatment for the contributions. Review of the solicitations and representations, in the same manner as review of donations to non-religious charities would be subject, is both of a general and non-discriminatory nature, and not in violation of the Free Exercise Clause. The Courts of the States of New Jersey, Maryland, New York and Rhode Island, have ruled that the gifts to religious institutions are subject to traditional common law remedies. *See Corrigan vs. Pironi*, 48 N.J. Eq. 67, 23 Atl. 355 (1891); *Farmer vs. O'Carroll*, 162 Md. 431, 160 A. 12, 17, 18 (Ct. Appls. Md. 1932). *Brown vs. Father Divine et als*, 173 Misc. 1029, 18 N.Y.S. 2d 544 (Supr. Ct., Special Term, New York County, 1940); and *Nelson vs. Dodge*, 68 A. 2d 51, 57 (Supr. Ct. RI 1949). These decisions are more extensively discussed in Section I, p. 19, *supra.*

Similarly, these cases have permitted that a finding of "trust and confidence" between the member of the Clergy and the Congregant could be made, based on the shared faith and the spiritual ascendancy of the Clergy member.

The Massachusetts Supreme Judicial Court ruled that Free Exercise Clause prevented consideration of the representations of the Clergy and also precluded a finding of "trust and confidence" between the Clergy and the Congregant. The Supreme Judicial Court relied on this Court's decision in *Serbian Eastern Orthodox Diocese vs. Milivojevich*, 426 U.S. 696 (1976). However, this Supreme Court Decision does not set down the limitations as interpreted by the Supreme Judicial Court.

The Supreme Court, in the *Serbian Eastern Orthodox* decision, stated,

> [T]he rule of action which should govern the civil courts ... is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom or law *have been decided by the highest of these church judicatories to which the matter has been carried*, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

Serbian Eastern Orthodox Diocese vs. Milivojevich, 426 U.S. 696, 710 (1976), citing *Watson vs. James*, 13 Wall. 679, 727 (1872) (emphasis supplied).

The Supreme Court concluded,

> In short, the First and Fourteenth Amendments permit hierarchical organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over those matters. *When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.*

Serbian Eastern Orthodox Diocese vs. Milivojevich, 426 U.S. 696, 724-25 (1976) (emphasis supplied).

The *Serbian East Orthodox* decision in no way pertains to whether the representations of the Clergy are protected by the Free Exercise Clause or preclude a finding of "Trust and Confidence" between the Clergy and the Congregant.

The Supreme Judicial Court further stated that a ruling that a Roman Catholic priest, or a member of the clergy of any religion, owes a fiduciary-confidential relationship to a parishioner that inheres in their shared faith and nothing more is impossible as a matter of law (*Maffei*, supra, at App. 22a). The Supreme Judicial Court is apparently applying a test somewhat similar to the District of Columbia Court of Appeals in *Roberts-Douglas vs. Meares*, 624 A. 2d 405, 423 (D.C. App. 1992), supra, which concluded that evidence of threats of divine retribution made to the congregation as a whole could be received and considered , particularly as there was also evidence of similar threats being delivered to the donor on a "one on one" basis. *Roberts-Douglas*, supra, at page 424.

The Supreme Court's decisions concerning the Free Exercise Clause, however, do not require that the Clergy have "one on one" contact with the Congregant-donor. One can easily recognize that such a limitation would remove from scrutiny the great majority of religious contributions made, and is not justified.

In any event, both the donations/contributions of the Maffei family and Eileen Hanafin had significant "one on one" contact to fall within the test suggested by the *Roberts-Douglas* court. With respect to Reverend Lord's communications with Waldo Maffei, Reverend Lord had

met with Waldo Maffei on two occasions and had identified the Maffei land as the only site where the Church could be built, before making the representation that the property would "forever" be used as a Church in honor of James Maffei. With respect to the gift of Eileen Hanafin, Reverend Vartzelis met with Eileen Hanafin and suggested that the gift be in honor of her late brother. While these communications were not in the form of duress or threats, as was present in the *Roberts-Douglas* case, there is certainly arguably the same considerable inherent emotional involvement, which would justify the consideration of both the "inherent" faith emanating from the shared religion and the "individual" solicitations/ communications between the Clergy member and the Congregant.

B. The Court Can Consider Undisputed Provisions of Canon Law.

The Petitioners' Complaint contended that Canon law provided for the Suppression of Churches, and attached as an Exhibit the Affidavit of Rev. Mark O'Connell, the Archdiocese's Assistant to the Moderator of the Curia for Canonical Affairs for the Archdiocese of Boston, which the Archdiocese itself submitted in the Action of *Mary Akoury, et als., Plaintiffs vs. Roman Catholic Archbishop of Boston, Sean Patrick O'Malley, as Corporation Sole, Defendant*, Suffolk Superior Court No. 04-3803B. The Affidavit itself refers to the Canon law provision for suppression of a Church.

The Supreme Judicial Court, relying on *Serbian East Orthodox*, stated that it could not consider evidence of the Canonical provision for suppression, stating

> (1) [The Court] may not attempt to interpret any particular provision of canon law, because as a matter of constitutional law, these matters are beyond the Court's authority.

(Page 244, first full paragraph); and (App. 22a).

> (2) The Maffeis can not advance their claim of negligent misrepresentation on the ground that Reverend Lord had a duty to inform them of the possibility that the Church could be suppressed, because the Court can not consider Canon law providing for suppression.

(Page 255, first full paragraph). (App. 31a).

However, the Court in *Serbian East Orthodox* was considering judicial review of a decision of an Ecclesiastical Tribunal, and concluded that a Civil Court can not review such a decision. The Petitioners' Complaint, however, did not seek review of any decision of an Ecclesiastical Tribunal. In fact, the Archdiocese's own Canon law expert had introduced the same canonical provision in another action. The Free Exercise Clause does not preclude the introduction of the provision, *see Martinelli vs. Bridgeport Roman Catholic Diocesan*, 196 F.3d 409 (2d Cir. 1999), and the ruling of the Supreme Judicial Court is in error.

C. The Erroneous Application of First Amendment Principles Resulted in the Dismissal of the Petitioners' Claims

The Supreme Judicial Court's decision first excludes from its consideration, on the basis of its construction of the Free Exercise Clause, the evidence of representations and communications upon which both the Maffei and Hanafin claims were based. The decision proceeds to state that the remaining allegations are insufficient to survive a Motion to Dismiss. Specifically, the decision states, with respect to both claims:

> (1) The claims of all three plaintiffs rest, in whole or in part, on the presumption that the RCAB owed them a legal duty, grounded in the "trust and confidence" inherent (they allege) in the priest-parishioner relationship, to inform them that, under Canon law, St. James could be suppressed at any time.

(*Maffei*, p. 237); and (App. 3a).

> (2) We may not inquire into the ecclesiastical authority of Reverend Vzrtzelis and Reverend Lord to bind the RCAB by making oral promises about church property, to examine the actual status or disposition of church property under canon law, or to attempt to interpret any particular provision of canon law. As a matter of constitutional law, such disputes are beyond our authority.

(*Maffei*, p. 244). (App. 14a).

As the Petitioners suggest that both of these statements are based on an erroneous application of First Amendment law, should the Supreme Court determine that the Supreme Judicial Court's application of this law was in error, the claims of all Petitioners must be reopened for consideration in light of the correct principles of law.

The Supreme Judicial Court, in disposing of the Maffei's claims for negligent misrepresentation, stated that there was no evidence of a fiduciary or confidential relationship between the Maffeis and the Archdiocese other than, "... the constitutionally impermissible grounds urged on us by the Maffeis ..." *Maffei*, p. 250. Similarly, if the First Amendment does not bar consideration of the averments made by the Petitioners, the issue as to whether they had a fiduciary or confidential relationship would again have to be reviewed.

CONCLUSION

At a time where there is a crisis concerning the propriety and use of contributions to religious organizations, the decision of the Massachusetts Supreme Judicial Court applies the Free Exercise Clause to all but prevent any legal action for violation of the trust and confidence inherent in same. The Petitioners urge the Supreme Judicial Court to grant certiorari.

Respectfully submitted,

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APPENDIX A — OPINION OF THE SUPREME JUDICIAL COURT OF MASSACHUSETTS, MIDDLESEX AS AMENDED JULY 24, 2007

SUPREME JUDICIAL COURT OF MASSACHUSETTS, MIDDLESEX

CATHERINE R. MAFFEI, individually & as trustee,[1] & others[2]

vs.

ROMAN CATHOLIC ARCHBISHOP OF BOSTON.

Middlesex. February 8, 2007. — May 25, 2007.

Present: MARSHALL, C.J., GREANEY, IRELAND, SPINA, COWIN, & GORDY, JJ.

MARSHALL, C.J. In this case concerning the transfer of real estate and other property from parishioners to their diocese, the plaintiff parishioners ask us, among other claims, to rule that the spiritual authority of a clergy member over members of his faith, without more, gives rise to a cognizable fiduciary relationship, or alternatively a legal relationship of "trust and confidence." We decline to do so.

The case arises from the suppression[3] of St. James the Great Parish in Wellesley (St. James) in 2004 by the

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1. Of the Waldo M. Maffei Revocable Trust.

2. Maureen Maffei, as trustee of the Waldo M. Maffei Revocable Trust, and Eileen Hanafin.

3. "Suppression" is a term of the Roman Catholic Code of Canon Law, which means to end the existence of a parish.

Appendix A

Roman Catholic Archbishop of Boston (RCAB), a corporation sole. See St. 1897, c. 506. St. James was built in 1958 on an eight-acre parcel of land (property) acquired by the RCAB in 1946 from Waldo M. Maffei (Waldo) and his five siblings. Waldo and his sister voluntarily transferred their respective interests in the property to the RCAB for no monetary payment, and Waldo's four brothers each received $3,000 for their respective shares. In connection with the property transaction, Waldo's wife, Catherine Maffei (Catherine), released her rights of "dower and homestead." The church was named in honor of Waldo's father, James Maffei (James), allegedly in fulfilment of an oral agreement between the RCAB and the Maffei family that the property would "forever" be used as the site of a church so named, although the plaintiffs' verified complaint alleges, and the judge found, that Waldo had been prepared to donate his interest in the property to the RCAB before any alleged oral agreement about the future use of the property was made.

After St. James closed, Catherine, individually, and with her daughter, Maureen Maffei, as trustee of the Waldo M. Maffei Revocable Trust[4] (collectively, Maffeis), filed a verified complaint in the Superior Court seeking declaratory and injunctive relief in the form of a resulting or constructive trust on the property in their favor, and for breach of contract and negligent misrepresentation. Their claims center on the alleged

4. The record does not disclose when the trust was created, although, as we discuss *infra*, it is undisputed that the trust is not a party to the property dispute at issue.

oral agreement between the Maffei siblings and the RCAB that the property would be maintained in perpetuity as a church in honor of Waldo's father, as well as on the RCAB's failure to draft a deed reflecting that, if the property were not so used, ownership would revert to the Maffeis. The Maffeis were joined by plaintiff Eileen Hanafin, who sought recovery from the RCAB for alleged negligent misrepresentation in connection with a donation of $35,000 she made to St. James more than two years before its closure.

The claims of all three plaintiffs rest, in whole or in part, on the presumption that the RCAB owed them a legal duty, grounded in the "trust and confidence" inherent (they allege) in the priest-parishioner relationship, to inform them that, under canon law, St. James could be suppressed at a future time. A judge in the Superior Court allowed the RCAB's motion for summary judgment on all counts and dismissed the case. We granted the plaintiffs' application for direct appellate review.

We conclude that summary judgment in the RCAB's favor was proper. First, as we explain below, insofar as the plaintiffs' causes of action are predicated on the alleged fiduciary or confidential relationship between a member of the Roman Catholic Church clergy and his congregants, the claims in this case raise matters of internal church governance that the First Amendment to the United States Constitution forbids us to consider.[5]

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5. The First Amendment to the United States Constitution states, in relevant part, that "Congress shall make no law

(Cont'd)

We may not, consistent with the First Amendment, inquire into any alleged pastoral duties owed by the Roman Catholic priesthood to its laity concerning matters of canon law. See, e.g., *Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich,* 426 U.S. 696, 710, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976); *Fortin v. Roman Catholic Bishop of Worcester,* 416 Mass. 781, 785, 625 N.E.2d 1352, cert. denied, 511 U.S. 1142, 114 S.Ct. 2164, 128 L.Ed.2d 887 (1994). Second, to the extent that the plaintiffs' claims pertain to matters legally cognizable in our civil courts, they fail in one or more of their essential elements. See Mass. R. Civ. P. 56, 365 Mass. 824 (1974). We may not address grievances that are insufficiently supported by cognizable evidence.[6]

1. *Facts.* We summarize the judge's findings and other uncontested material of record, as viewed in the plaintiffs' favor. *Kourouvacilis v. General Motors Corp.,* 410 Mass. 706, 716, 575 N.E.2d 734 (1991). The RCAB was incorporated by the Legislature in 1897, and empowered, among other things, to "receive, take and hold, by sale, gift, lease, devise or otherwise, real and personal estate of every description, for religious, charitable and burial purposes, and to manage and dispose of the same for the religious and charitable purposes of the Roman Catholic church." St. 1897, c. 506,

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(Cont'd)
respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

6. We acknowledge the amicus briefs of the members of St. Jeremiah Parish and others, and the Council of Parishes.

§ 2. In the 1940's, Reverend Robert H. Lord of St. Paul's Parish in Wellesley sought permission from the RCAB to purchase land to establish a church to serve the needs of the growing Roman Catholic population of East Natick and the adjacent "Fells section" of Wellesley, who were geographically isolated from existing parishes in those towns. The RCAB approved the request, and Reverend Lord began searching for a suitable location for the new church. He soon identified a tract of approximately eight acres of land on the Worcester Turnpike in Wellesley as "the best site-and, indeed, the only good site-for such a church." The land was held in equal shares as tenants in common by James's six children.[7]

Some time in 1946, Reverend Lord had several conversations with Waldo in Waldo's home during which he inquired about the Maffei family's donating the property to the RCAB for use as the site of a church. The conversations apparently occurred in the presence or within the hearing of Catherine. According to a "statement under oath" that Catherine gave to her attorneys in May, 2005, Reverend Lord came to the Maffei house several times to explore obtaining the property for use as a church.[8] Waldo thereafter contacted

7. James Maffei, an Italian immigrant, established a successful sand and gravel business and owned several tracts of land in Wellesley and the surrounding area. He purchased the property in 1925. James Maffei died in 1937, and his wife, Angela, died in 1943.

8. The verified complaint avers that, prior to any subsequent conversation between Waldo and Reverend Lord about naming the church for James, "[t]he Maffei brothers, other than Waldo, desired to receive money for the transfer of their interests."

his sister and four brothers about the RCAB's request, but they rejected it. On the third visit to Waldo's home,[9] in the presence of Catherine, Reverend Lord told Waldo that the church would be named "St. James" in honor of Waldo's father, and that the church would remain a tribute to James "forever." He also told Waldo that the RCAB would pay each of the other four Maffei brothers $3,000 to transfer their respective interests in the property.[10] According to Catherine, who is the sole

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9. The judge's statement that Reverend Lord visited Waldo's home three times to ask about the property is consistent with the number of visits alleged in the verified complaint. A letter from Reverend Lord to his superiors introduced in evidence by the Maffeis referred to "protracted negotiations" with the Maffei family. Catherine, in her sworn statement, testified that Reverend Lord "came back [to her home] several times" to talk about the property.

10. The verified complaint and Catherine's sworn statement are often at odds on key factual representations. According to Catherine's sworn statement, it was Waldo who first raised the issue of naming the church after his father; after Reverend Lord told Waldo that he had made inquiries of his superiors and determined that this was possible, Waldo said that the deal could be finalized if the RCAB were willing to give his brothers "some little thing," such as "$3,000 apiece" to transfer their respective interests. The verified complaint alleges that Reverend Lord is the person who broached the idea of naming the church for James Maffei (James), and that Waldo's brothers asked to be paid $3,000 each for their interests in the property. The judge's findings follow the version of events set out in the verified complaint rather than Catherine's relatively more spontaneous sworn statement, and we discern no abuse of discretion in his choosing between the plaintiffs' own conflicting facts.

surviving participant of these events,[11] during negotiations for the property Reverend Lord did not inform any members of the Maffei family that canon law permitted the closure of the church in the future.[12]

The Maffei family agreed to transfer the property to the RCAB for $12,000 (representing payment of $3,000 to each of Waldo's four brothers), a price that amounted to $1,500 per acre.[13] The parties did not enter into a

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11. Reverend Lord died in 1954, and Waldo died on January 13, 2003.

12. The Maffeis submitted the affidavit of an expert in canon law, that Canon 515, § 2, of the Roman Catholic Code of Canon Law governs suppression of a parish. Canon 515, § 2, promulgated by Pope John Paul II in 1983, provides: "It is only for the diocesan bishop to erect, suppress, or alter parishes. He is neither to erect, suppress, nor alter notably parishes, unless he has heard the presbyteral council."

In their verified complaint, the plaintiffs state their "belie[f]" that the suppression provisions of canon law in effect in 1946, when the deed to the property was transferred, were similar to those promulgated by Pope John Paul II. Although the RCAB denies the allegation of similarity in its answer, it does not contest the fact of suppression under prevailing canon law. Whether the 1983 code or any other code of canon law authorizes suppression of a parish is not relevant to our resolution of the claims in this case.

13. The Maffeis alleged that similar property sold for $2,000 to $2,200 per acre at the time. This estimate is consistent with the statements of Reverend Lord to his superior in a letter dated

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purchase and sales agreement, but executed a deed transferring all legal and beneficial interest in the property to the RCAB in exchange "for consideration paid." An attorney hired by the RCAB prepared the deed, which the Maffei siblings, choosing not to be represented by counsel, had the opportunity to read and then signed before a notary in Waldo's home.[14] The spouses of the four married Maffei brothers, Catherine among them, also executed the deed, relinquishing their rights of "dower and homestead."[15] The deed, in fee

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September 16, 1946, in which, among other things, Reverend Lord states that similar land "usually sells at around $2,000 an acre. For a tract just across the street from the one I want (and inferior to it) the owner demands $2,400 an acre. The Town of Wellesley recently paid $2,200 for one acre of land adjacent to the tract I am bargaining for." Reverend Lord also stated in the letter that, according to a member of the planning board of Wellesley whom he consulted, "$12,000 is really a very cheap price for the Maffei land."

14. Although the verified complaint states that counsel hired by the RCAB prepared the deed and that the Maffei family was not represented by counsel when they sold the property, Catherine in her sworn statement states that one of the Maffeis' neighbors, who was an attorney, prepared the deed at their request ("we got ahold of [the attorney], and she put everything together") and was present when the deed was executed. The neighbor, identified by Catherine in her sworn statement as the lawyer who prepared the deed, is named in the verified complaint only as the person who notarized the deed.

15. In her sworn statement, Catherine testified that she did not read the deed, relying instead on Waldo's business acumen in such matters.

simple absolute, makes no reference to naming the church in honor of James. Nor does it recite any alleged agreement concerning using the property "forever" as a church. The deed contains no reservation of rights or right to enter or retake the property. The Maffeis claimed that the family never would have executed the deed had they been informed that the property might not always be used as the locus of a church named for James.

In 1950, the RCAB erected St. James as a parish, and by 1958, a new St. James Church (renamed St. James the Great to avoid confusion with another church in the area) was constructed. Waldo and Catherine, founding parishioners, became heavily involved in the affairs of St. James. Waldo paid $10,000 for the church altar, and he and his wife frequently volunteered their time and resources to benefit the parish.[16] In 2002, the church served approximately 900 families.

By that time, however, questions, real or rumored, had arisen concerning St. James's continued viability. In 1999, an article appeared in a local newspaper stating that the RCAB had included St. James on a list of parish churches to be closed. Shortly thereafter, Reverend George Vartzelis, then pastor of St. James, assured his congregation that the article was incorrect and that

16. In her sworn statement, Catherine was asked whether Waldo would "have been this much involved if the church had not been named after his father." She replied: "Oh, sure, sure. Sure. We were religious. We believed in the priests and the church. We were very good Catholics."

St. James would remain open. In June, 2002, the RCAB launched a capital endowment campaign in which each of its 368 parishes was to raise a specific amount in donations. St. James's target was $370,000. In conjunction with the capital campaign, Reverend Vartzelis sent solicitation letters to his parishioners requesting funds for the RCAB campaign, and also asked for $35,000 in donations to refurbish St. James "to keep it as good as it needs to be and as we all want it to be now and for the future." Reverend Vartzelis, at the time he made these statements, had no knowledge of the RCAB's plans, if any, to close the church. Based on Reverend Vartzelis's representation that a gift would benefit St. James "now and for the future," Hanafin, then a retiree in her eighties, donated $35,000 to the church. Hanafin states in her affidavit: "If I had known that the Archdiocese . . . was giving any consideration to closing St. James, I would not have made the gift of $35,000."

Reverend Vartzelis retired in the spring of 2003, and the RCAB replaced him with an administrator, an interim position, rather than with a pastor. In January, 2004, the RCAB required each "cluster"[17] of parishes to investigate and report on which parishes in the cluster might be closed in a "reconfiguration" plan. The Wellesley-Weston cluster, to which St. James belonged, reported in their "reconfiguration response" that, while it would be best for all parishes in the cluster to remain open, St. James would be the "most feasible" church to

17. A "cluster" is an administrative unit of churches that share a common geographic location.

close as it "has the smallest number of recorded families and individuals; the smallest Mass count; the smallest religious education program; and the smallest sacramental index." On October 5, 2004, the RCAB issued a decree of suppression of St. James, effective October 31, 2004. The decree reassigned the territory covered by St. James to other parishes, transferred the canonical registers of St. James to another parish, and transferred "the goods and obligations" of St. James to the RCAB.[18] The RCAB retained legal title to the property. During one of the last Masses before the church closed, Hanafin asked Reverend Vartzelis, "Father, why didn't you tell us the church was closing?" He replied, "I really didn't know it, Eileen," and he seemed, Hanafin stated in her affidavit, "visibly upset."

The plaintiffs filed their six-count verified complaint on June 8, 2005.[19] They subsequently moved for lis

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18. The plaintiffs have alleged that, in accordance with canon law, a group calling itself "the Friends of St. James the Great Parish" appealed from the decree of suppression to the RCAB and, when that appeal failed, next appealed to the Vatican. The plaintiffs are among the signatories to the appeal to the Vatican. The present status of the religious appeal is unknown; it has no bearing on the questions of civil law we decide today.

19. Count I sought declaratory and injunctive relief to, among other things, declare the alleged oral agreement between the RCAB and the Maffei family enforceable, and for reversion of the property to the family; Count II sought to impose a resulting trust on the RCAB in the Maffeis' favor to enforce a conditional gift; Count III was a claim by the Maffeis for "breach

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pendens on the property and, in light of Catherine and Hanafin's advanced age, for a speedy trial. The RCAB moved to dismiss the complaint pursuant to Mass. R. Civ. P. 12(b)(6), 365 Mass. 754 (1974). The judge denied the RCAB's motion to dismiss and allowed the plaintiffs' motion for lis pendens and motion for a speedy trial. Thereafter, all parties moved for summary judgment.

We turn now to the merits.

2. *Scope of review.* As the movant for summary judgment on all counts, the RCAB must affirmatively establish the absence of a triable issue as to each of the plaintiffs' claims. In deciding the motion, the judge was required to consider all factual allegations, and all reasonable inferences drawn therefrom, favorably for the plaintiffs. *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 716, 575 N.E.2d 734 (1991). We review the judge's legal conclusions de novo. *Ritter v. Massachusetts Cas. Ins. Co.*, 439 Mass. 214, 215, 786 N.E.2d 817 (2003).

Our consideration of the plaintiffs' appeal is also informed, and limited, by bedrock principles of the First Amendment. It is axiomatic that the First Amendment protects an individual's freedom to worship, or not to worship, as he or she chooses. It also places beyond our

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of fiduciary duty and constructive trust"; Count IV was the Maffeis' breach of contract claim; Count V, their claim for negligent misrepresentation; and Count VI, Hanafin's claim for negligent misrepresentation.

jurisdiction disputes involving church "doctrine, canon law, polity, discipline, and ministerial relationships." *Williams v. Episcopal Diocese of Mass.*, 436 Mass. 574, 579, 766 N.E.2d 820 (2002). See *Hiles v. Episcopal Diocese of Mass.*, 437 Mass. 505, 515, 773 N.E.2d 929 (2002); *Wheeler v. Roman Catholic Archdiocese of Boston*, 378 Mass. 58, 61, 389 N.E.2d 966, cert. denied, 444 U.S. 899, 100 S.Ct. 208, 62 L.Ed.2d 135 (1979). Among the religious controversies off limits to our courts are promises by members of the clergy to keep a church open. See *Fortin v. Roman Catholic Bishop of Worcester*, 416 Mass. 781, 785, 625 N.E.2d 1352, cert. denied, 511 U.S. 1142, 114 S.Ct. 2164, 128 L.Ed.2d 887 (1994) ("To inquire into an alleged promise by the Bishop to keep a parish open or refrain from merging it with another parish was an impermissible intrusion into the Bishop's ecclesiastical authority"). See also *Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich*, 426 U.S. 696, 721, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976) ("reorganization of the Diocese involves a matter of internal church government, an issue at the core of ecclesiastical affairs").

This is not to say that every property dispute between a church and its adherents is beyond the review of civil courts. "The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively." *Jones v. Wolf*, 443 U.S. 595, 602, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979). But even in the property arena, we must proceed with caution, for the First Amendment also

"circumscribes the role that civil courts may play in resolving church property disputes." *Id.*, quoting *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969). We have jurisdiction over church property disputes if and to the extent, and only to the extent, that they are capable of resolution under "neutral principles of law"—which the United States Supreme Court has defined as "well-established concepts of trust and property law familiar to lawyers and judges." *Jones v. Wolf, supra* at 603, 99 S.Ct. 3020. See *Fortin v. Roman Catholic Bishop of Worcester, supra* at 786, 625 N.E.2d 1352; *Mitchell v. Albanian Orthodox Diocese in Am., Inc.*, 355 Mass. 278, 282, 244 N.E.2d 276 (1969).

The standards enunciated above clearly forbid our consideration of the religious obligations, if any, of a clergy member to his or her congregants, or of the "trust and confidence" that may be engendered in congregants solely by virtue of the clergy's religious authority. We certainly must also stand apart from questions of canon law: we must avoid inquiry into whether the RCAB, Reverend Lord, or Reverend Vartzelis owed a fiduciary, confidential, or any other duty to discuss with the plaintiffs the nature of property ownership under canon law. We may not inquire into the ecclesiastical authority of Reverend Vartzelis and Reverend Lord to bind the RCAB by making oral promises about church property, to examine the actual status or disposition of church property under canon law, or to attempt to interpret any particular provision of canon law. As a matter of

constitutional law, such disputes are beyond our authority. *Alberts v. Devine*, 395 Mass. 59, 72, 479 N.E.2d 113, cert. denied sub nom. *Carroll v. Alberts*, 474 U.S. 1013, 106 S.Ct. 546, 88 L.Ed.2d 475 (1985).

In this case, the RCAB did not raise the constitutional issue of jurisdiction. The judge in the Superior Court, however, properly noted the necessary restraint in analyzing the plaintiffs' ownership claims. For the purposes of this appeal, we shall presume jurisdiction strictly limited by the constitutional principles stated above.

3. *Standing.* As an initial matter, the judge rejected for lack of standing the Maffeis' claim that they gifted the property to the RCAB in trust. He ruled that, because the Maffeis' interests in the alleged charitable trust were indistinguishable from those of other parishioners of St. James, only the Attorney General was authorized to prosecute claims to enforce the trust's provisions. See G.L. c. 12, § 8.[20] Although it is not clear whether the judge's ruling on standing applied also to Hanafin, on appeal the defendant urges that we also deny Hanafin standing to bring her claim. We shall accordingly address standing as to all of the plaintiffs. Although we

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20. General Laws c. 12, § 8, provides: "The attorney general shall enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof." The Attorney General's exclusive authority under the statute encompasses charitable "assets" in general as well as charitable "funds." See *Weaver v. Wood*, 425 Mass. 270, 275, 680 N.E.2d 918 (1997).

agree with the judge that the standing of some of the plaintiffs is problematic, we do so for reasons different from those he articulated.

Turning first to the judge's reasoning, it is clear that the plaintiffs have alleged individual stakes in this dispute that make them, and not the Attorney General, the parties to bring suit, assuming no other impediments to their standing to pursue this litigation. A "gift to a church generally creates a public charity." *Sears v. Parker, Attorney Gen.*, 193 Mass. 551, 555, 79 N.E. 772 (1907). "[I]t is the exclusive function of the Attorney General to correct abuses in the administration of a public charity by the institution of proper proceedings. It is his duty to see that the public interests are protected . . . or to decline so to proceed as those interests may require." *Lopez v. Medford Community Ctr., Inc.*, 384 Mass. 163, 167, 424 N.E.2d 229 (1981), quoting *Ames v. Attorney Gen.*, 332 Mass. 246, 250-251, 124 N.E.2d 511 (1955). However, a plaintiff who asserts an individual interest in the charitable organization distinct from that of the general public has standing to pursue her individual claims. *Lopez v. Medford Community Ctr., Inc., supra.* See *Weaver v. Wood*, 425 Mass. 270, 276, 680 N.E.2d 918 (1997) (standing arises from claim of "personal right that directly affects the individual member").

In this case, the plaintiffs' claims are readily distinguishable from those of the general class of parishioner-beneficiaries. The Maffeis allege that they conditionally gifted their land to the RCAB and that they

personally have an equitable reversionary interest in the property as a result of the actions of the RCAB. Hanafin claims that she lost substantial personal funds as the result of the RCAB's negligent misrepresentation to her. These claims are personal, specific, and exist apart from any broader community interest in keeping St. James open. See *id.* The plaintiffs have alleged personal rights that would, in the ordinary course, entitle them to standing.

However, the issue of standing for the Maffei plaintiffs is clouded by the fact that they have brought suit as the sole trustees of the Waldo M. Maffei Revocable Trust (trust),[21] and as the trust's sole beneficiaries. But the real property they seek to recover is property that Waldo, in his individual capacity, voluntarily alienated from his estate in 1946, possibly before the trust was created, see note 4, *supra*, and almost sixty years before the trust proceeds became distributable to the trustees at Waldo's death in 2003.[22] The RCAB raises the issue of

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21. The Maffeis allege that, under the second article of the will of Waldo, who died in January, 2003, the residue of his estate is distributable to the trustees, being Catherine and her daughter, Maureen Maffei.

22. Catherine Maffei has also brought suit in her individual capacity. She, like Hanafin, has standing in her individual capacity, having given up her rights of dower and homestead in the property in reliance, she alleges, on Reverend Lord's "assurance" that the property would always be used as a church in memory of her father-in-law. She specifically alleges that she would not have given up those rights, nor would she have executed the deed transferring the property to the RCAB, had that assurance not been given to her.

the trustees' standing only in passing, without citation. See, e.g., *Greater Media, Inc. v. Department of Pub. Utils.*, 415 Mass. 409, 418, 614 N.E.2d 632 (1993) (cursory argument not supported by meaningful authority does not rise to the level of proper appellate argument). We address the merits of the trustees' argument because the RCAB has effectively waived any claim of standing, see *John Hancock Mut. Life Ins. Co. v. Banerji*, 447 Mass. 875, 887 n. 20, 858 N.E.2d 277 (2006), because the Maffei plaintiffs raise substantial issues that may arise again, see *Knapp Shoes, Inc. v. Sylvania Shoe Mfg. Corp.*, 418 Mass. 737, 738-739 n. 1, 640 N.E.2d 1101 (1994), and because Catherine's individual claims must in any event be adjudicated.

4. *Constructive trust.* A constructive trust is a flexible tool of equity designed to prevent unjust enrichment resulting from fraud, a violation of a fiduciary duty or confidential relationship, mistake, or "other circumstances" in which a recipient's acquisition of legal title to property amounts to unjust enrichment.[23] *Fortin v. Roman Catholic Bishop of Worcester*, 416 Mass. 781, 789, 625 N.E.2d 1352, cert. denied, 511 U.S. 1142, 114 S.Ct. 2164, 128 L.Ed.2d 887 (1994). See *Nessralla v. Peck*, 403 Mass. 757, 762-763, 532 N.E.2d 685 (1989); *Kelly v. Kelly*, 358 Mass. 154, 156, 260 N.E.2d 659 (1970) (listing circumstances giving rise to constructive trust).

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23. In cases where no express trust exists, a judge may employ the equitable remedies of constructive or resulting trust to avoid injustice to the grantee of an interest in real property. See generally J.R. Nolan & L.J. Sartorio, Equitable Remedies § 351 (2d ed.1993).

See generally 5 A.W. Scott & W.F. Fratcher, Trusts § 462 (4th ed.1989). A constructive trust may arise even if the parties did not intend to convey the real estate in trust. *Yamins v. Zeitz*, 322 Mass. 268, 272, 76 N.E.2d 769 (1948). The Maffeis assert that they have established a prima facie claim to a constructive trust in their favor as to every theory under which a constructive trust may be imposed: fiduciary or confidential relationship, fraud, mutual mistake, and unconscionability and unjust enrichment. The judge rejected their claims, and for the reasons we explain below, his decision was sound. We begin first with the breach of duty claim.

a. *Constructive trust: breach of fiduciary duty — confidential relationship.* The court may impose a constructive trust where one acquires an interest in property in breach of a legal duty to one who has granted that interest. See *Fortin v. Roman Catholic Bishop of Worcester, supra* at 789, 625 N.E.2d 1352. The duty may be a fiduciary duty, but it need not be a fiduciary duty that is established as a matter of law, such as that of attorney to client or trustee and beneficiary. A fiduciary duty may arise from the circumstances. See, e.g., *Patsos v. First Albany Corp.*, 433 Mass. 323, 331-332, 741 N.E.2d 841 (2001) (plaintiff's affidavit raised sufficiently specific allegations that would permit jury to find that "a full relation of principal and broker" arose between plaintiff client and defendant broker, giving rise to broker's fiduciary duties to client); *Warsofsky v. Sherman*, 326 Mass. 290, 293-294, 93 N.E.2d 612 (1950) (where loan applicant supplied confidential information to defendant banker, who "impliedly at least" understood the terms

on which applicant's information was given and undertook to comply with those terms, banker stood in relation toward applicant and could not use information for personal gain). A constructive trust may also be appropriate to remedy the breach of duty arising from a relationship of "trust and confidence" that is not a fiduciary relationship established as a matter of law, such as a relationship in which one party confides confidential information to one who then uses that information for his own benefit and to the declarant's harm. See, e.g., *Sullivan v. Rooney,* 404 Mass. 160, 163, 533 N.E.2d 1372 (1989) (fiduciary relationship between unmarried cohabitants where woman reasonably relied on defendant companion's promises to take care of her and defendant knew of and accepted plaintiff's trust in him); *Broomfield v. Kosow,* 349 Mass. 749, 757, 212 N.E.2d 556 (1965) (abuse of "influence springing from that trust and confidence to obtain personal advantage" at the expense of another warrants imposition of constructive trust). The confidential relationship, however, must comprise more than "[m]ere respect for the judgment of another or trust in his character. . . ." *Meskell v. Meskell,* 355 Mass. 148, 151, 243 N.E.2d 804 (1969), quoting *Comstock v. Livingston,* 210 Mass. 581, 584, 97 N.E. 106 (1912). Moreover, a constructive trust "is not imposed where a recipient has given value or had no notice of the violation of duty." *Demoulas v. Demoulas Super Mkts., Inc.,* 424 Mass. 501, 544, 677 N.E.2d 159 (1997).

Here, the Maffeis assert that the RCAB, acting through its designated agent, Reverend Lord, owed them a fiduciary duty to apprise the family of the

possibility of suppression and to draft a deed reflecting what they allege was the parties' understanding of their conditional transfer of interest in the property. Alternatively, the Maffeis argue that their relationship with Reverend Lord and the RCAB created a cognizable relationship of "trust and confidence" breached by these actions.

The fatal flaw in these arguments is evident in the Maffeis' contention that the RCAB's legal duties flow principally from the parties' shared religious affiliation. As they allege in their verified complaint, the Maffeis "reposed absolute trust and confidence in Reverend Lord, as he was the Pastor of a Catholic Church, and absolute trust in his promise that the land would forever be used as a Church. . . . Reverend Lord understood that the Maffeis trusted him, as he was a Priest and a Pastor of a Catholic Church." Or, as Catherine testified in her sworn statement when asked whether Reverend Lord's status as a priest had "any effect on your believing him" that the property would remain a church in honor of James: "Of course. . . . Everything the priests said, we trusted him very dearly. We really did. So what Father Lord said, he was a gentleman and a wonderful priest, and we believed everything he said." Or, as the Maffeis assert in their brief on appeal: there "must" be a relationship of trust and confidence between a diocese and the members of the faith it purports to serve; "one's religion creates faith and trust that [the] Church is asking [for donations] in good faith."A ruling that a Roman Catholic priest, or a member of the clergy of any (or indeed every) religion, owes a fiduciary-confidential

relationship to a parishioner that inheres in their shared faith and nothing more is impossible as a matter of law.[24]

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24. The Maffeis are correct that Massachusetts courts have "not directly addressed the question of whether a pastor-communicant relationship is per se a confidential one when undue influence is alleged." See *Dovydenas v. The Bible Speaks,* 869 F.2d 628, 641-642 (1st Cir.), cert. denied, 493 U.S. 816, 110 S.Ct. 67, 107 L.Ed.2d 34 (1989) (court need not decide whether under Massachusetts law confidential relationship between parishioner and communicant exists where other evidence of record establishes such relationship). They have not persuaded us to recognize such a relationship as a matter of law in all circumstances by citing decisions from other jurisdictions that they argue do so. One of these cases is not relevant to the circumstances of adult parishioners. See *Koenig v. Lambert,* 527 N.W.2d 903, 906 (S.D.1995), overruled on other grounds by *Stratmeyer v. Stratmeyer,* 567 N.W.2d 220 (S.D.1997) (relationship between altar boy and diocese and its members one of trust and confidence because defendant clerics "were not only acting as members of the church, they were also acting as agents or representatives of God," and plaintiff altar boy was taught to "trust and respect" them). The other cases on which they rely concern circumstances of repeated, affirmative false statements by clergy to the plaintiff that would constitute fraud apart from any religious affinity between the parties. The cases cited provide scant support for the premise that a member of the clergy is obligated as a matter of law to inform a parishioner about a matter of canon law that may have some future operation on the estate granted. See *Farmer v. O'Carroll,* 162 Md. 431, 435, 160 A. 12 (1932) (plaintiff, who was extremely depressed and nervous, "became easily subject to the undue and dominating influence" of cleric who repeatedly and with fraudulent statements importuned her to turn over her property); *Corrigan v. Pironi,* 48 N.J.Eq. 607, 610, 23 A. 355 (1891) (transfer of land to priest

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by "ignorant, eccentric, and entirely illiterate" elderly woman); *Brown v. Divine,* 173 Misc. 1029, 1030, 18 N.Y.S.2d 544 (N.Y.Sup.Ct.), aff'd, 260 A.D. 443, 444, 23 N.Y.S.2d 116 (N.Y.1940) (spiritual advisor who falsely represented that he would deposit plaintiff's money in his "Heavenly Treasure" and return it to her on demand holds funds as constructive trustee); *Nelson v. Dodge,* 76 R.I. 1, 12, 68 A.2d 51 (1949) (cult-like religious figure who exercised near-total dominance over congregants and effected "complete surrender" of plaintiff's will abused confidential relationship with plaintiff-parishioner who turned over substantial property to cleric).

The Maffeis correctly state that these decisions contain statements that one who acts in the capacity of "spiritual ascendancy" over a donor has a confidential relationship to the donor that requires the spiritual advisor to justify any gift made to him or her by the donor. See, e.g., *Farmer v. O'Carroll, supra* at 444, 160 A. 12 ("relation of spiritual adviser and a member of his congregation is generally regarded as of a confidential nature"); *Corrigan v. Pironi, supra* at 609, 23 A. 355 ("spiritual ascendancy" of a Roman Catholic priest over a Roman Catholic layperson "in a legal point of view is deemed confidential"); *Brown v. Divine, supra* (proof that defendant religious leader was "spiritual adviser" to plaintiff places on defendant burden of justifying acceptance and use of plaintiff's money and property); *Nelson v. Dodge, supra* at 12-14, 68 A.2d 51, citing *Corrigan v. Pironi, supra* at 609, 23 A. 355 (equity will come to aid of one who has parted with property while under such influence, even absent showing of fraud or "imposition"). However, these decisions predate the Supreme Court's First Amendment jurisprudence as reflected in, for example, *Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich,* 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976), and *Fortin v. Roman Catholic Bishop of Worcester,* 416 Mass. 781, 625 N.E.2d 1352, cert. denied, 511 U.S. 1142, 114 S.Ct. 2164, 128 L.Ed.2d 887 (1994), and we do not consider them weighty authority.

Such a conclusion would require a civil court to affirm questions of purely spiritual and doctrinal obligation. The ecclesiastical authority of the RCAB and Reverend Lord over the parishioners, the ecclesiastical authority of the RCAB over Reverend Lord, the state of canon law at the date of the property transfer, the knowledge of the canon law that might reasonably be attributed to the RCAB and Reverend Lord in 1946, the canonical obligation of Reverend Lord, if any, to inform parishioners of canonical law-all of these inquiries bearing on resolution of the Maffeis' fiduciary claims would take us far afield of "neutral principles of law."[25] See *Jones v. Wolf,* 443 U.S. 595, 602, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979). We decline to hold that, as a matter of civil law, the relationship of a member of the clergy to his or her congregants, without more, creates a fiduciary or confidential relationship grounded in their shared religious affiliation for which redress is available in our courts.

Nor, apart from the constitutionally impermissible grounds urged on us by the Maffeis, is there other evidence of a fiduciary or confidential relationship between the parties in the transaction for sale of the property. This is not a case where the RCAB or Reverend Lord allegedly undertook to manage property solely for

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25. In light of what we have said concerning the First Amendment, we decline the plaintiffs' invitation to take "the opportunity to outline the responsibilities of religious organizations to their members concerning the necessary information to provide their worshippers before accepting their contributions."

the Maffeis' benefit or acted without their prior authorization, cf. *Patsos v. First Albany Corp.*, 433 Mass. 323, 336-337, 741 N.E.2d 841 (2001), or used confidential information of the Maffeis to effect the sale. Cf. *Broomfield v. Kosow*, 349 Mass. 749, 757, 212 N.E.2d 556 (1965). Nor can the clearly aspirational oral statement that the property would "forever" be a church in honor of James, without more, create an actionable duty breached by the church's closure. See *Meskell v. Meskell*, 355 Mass. 148, 151, 243 N.E.2d 804 (1969). On the record before us, the breach of duty claim cannot be sustained.

b. *Constructive trust: fraud.* The Maffeis argue, in essence, that because Reverend Lord negotiated for the property from a position of superior knowledge of the canon law of suppression, his statement that the property would be used "forever" for a church honoring James Maffei was an actionable "misrepresentation of future facts" that should be remedied by a reversion of the property to the Maffeis. The Maffeis' appeal to the authority of *Cellucci v. Sun Oil Co.*, 2 Mass.App.Ct. 722, 320 N.E.2d 919 (1974), *S.C.*, 368 Mass. 811, 331 N.E.2d 813 (1975), and *Gopen v. American Supply Co.*, 10 Mass.App.Ct. 342, 407 N.E.2d 1255 (1980), to support their argument is unavailing. In the *Cellucci* case, the court ordered specific performance of an agreement to sell real estate where the agent of the defendant-purchaser made representations of fact and law designed to induce the plaintiff to refrain from negotiation with the defendant's competitor for sale of the property. Among the misstatements was that the purchase and sale agreement between the parties meant that the defendant

had purchased the site. *Cellucci v. Sun Oil Co.*, *supra* at 730-731, 320 N.E.2d 919. In the *Gopen* case, the defendant parent company was found liable to a commercial lessor for misstating its subsidiary's financial condition, thereby inducing the lessor to enter into a lease with the subsidiary. *Gopen v. American Supply Co.*, *supra* at 345, 407 N.E.2d 1255. In both cases cited, the actionable misrepresentation was "made by one possessed of superior knowledge to take advantage of the relative ignorance of another." *Cellucci v. Sun Oil Co.*, *supra* at 731, 320 N.E.2d 919. See *Gopen v. American Supply Co.*, *supra*. In both cases cited, the fraud occurred at the time the property was transferred. See also *Pietrazak v. McDermott*, 341 Mass. 107, 109-110, 167 N.E.2d 166 (1960) (home builder's statement that "there would be no water in the cellar," although not made with intent to deceive, would support deceit action where statement was made as though with personal knowledge, was capable of being known by builder, and was material to plaintiffs' decision to buy house). In each case the statements were made with the clear knowledge that they were untrue or with the false implication that the speaker was speaking from personal knowledge.

Here, considering the Maffeis' claims under neutral principles of law, the record is devoid of any evidence of Reverend Lord or the RCAB's intent to mislead or to deceive the Maffeis. There is no allegation that applicable canon law was confidential and not accessible to the plaintiffs. Moreover, the alleged oral promise of a church existing in perpetuity and in James's honor cannot fairly

be characterized as a verifiable statement when made, and is thus materially different from, for example, a statement about corporate structure and signing authority, see, e.g., *Cellucci v. Sun Oil Co.*, *supra*, or a statement about the financial condition of one's subsidiary, see, e.g., *Gopen v. American Supply Co.*, *supra*. An action for deceit will not lie for statements that are "merely a matter of opinion, estimate, or judgment." *Powell v. Rasmussen*, 355 Mass. 117, 118, 243 N.E.2d 167 (1969), quoting *Chatham Furnace Co. v. Moffatt*, 147 Mass. 403, 404, 18 N.E. 168 (1888). Finally, a "subsequent refusal to carry out an oral promise, standing by itself, is not ... fraud" remediable by a constructive trust. J.R. Nolan & L.J. Sartorio, Equitable Remedies § 351, at 496 (2d ed.1993). Equity may not rest on such a slender reed. There was no error.

c. *Constructive trust: mutual mistake.* For the reasons advanced above, we agree with the judge in the Superior Court that the Maffeis have "no reasonable expectation" of proving that mutual mistake as to the parties' understanding of the legal status of the property sale.[26] They have advanced no evidence beyond

26. The Maffeis argue that the judge erroneously shifted to them the burden on summary judgment of establishing Reverend Lord's knowledge or lack of knowledge of the canon law of suppression. We see no error, where the plaintiffs' allegations concerning Reverend Lord's knowledge and state of mind were couched in highly speculative and conditional terms ("It is likely" that Reverend Lord knew that the proposed church would be subject to suppression, and "[i]f Reverend Lord did not understand that the provisions of Canon law" authorized

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speculation to support the claim that Reverend Lord did not intend an outright purchase of the property for use according to the RCAB's needs.[27] Cf. *Ide v. Bowden*, 342 Mass. 22, 172 N.E.2d 88 (1961) (mutual mistake as to intention to divide property at State line remediable by constructive trust).

d. *Constructive trust: unconscionability and unjust enrichment.* It is unsupportable for the Maffeis to contend that the RCAB purchased the property for an unconscionably low price of $1,500 per acre where they do not allege that the RCAB would have refused to pay them $3,000 each for their interest, as was paid to the other Maffei children. Had Waldo and his sister sold their interests, as their siblings did, rather than gifting them, the RCAB may have had to pay more than the $2,000-$2,200 per acre alleged to be the going price for comparable land.[28] Where the record establishes that two

(Cont'd)
suppression, then parties transferred property based on mutual mistake). See *Fortin v. Roman Catholic Bishop of Worcester*, 416 Mass. 781, 790, 625 N.E.2d 1352, cert. denied, 511 U.S. 1142, 114 S.Ct. 2164, 128 L.Ed.2d 887 (1994).

27. A letter from Reverend Lord to his superiors in September, 1946, speaks only of a sale of the property to the RCAB, and makes no mention of any promise of naming the church for James or using the site as the locus of a church "forever." The reply letter from the chancellor of the archdiocese to Reverend Lord authorizing him to purchase the property also makes no reference to the alleged oral promise.

28. At a total purchase price of $18,000, representing a payment of $3,000 to each sibling, the price for each acre of the eight-acre property would be in excess of $2,200.

of the Maffei siblings were willing to transfer voluntarily and that, partly as a result of their donated interests, the RCAB paid a low, but not unconscionable, price for the property; the deed unambiguously granted the RCAB full legal and equitable interest in the property; and where the Maffeis have not shown a triable issue on their claims of fraud, breach of duty, or mutual mistake, they are not entitled to a constructive trust on generalized allegations of unconscionability or unjust enrichment. Cf. *White v. White,* 346 Mass. 76, 79-80, 190 N.E.2d 102 (1963) (unjust enrichment found and constructive trust imposed by court where "the words used in the instrument of transfer resulted in a situation which was materially at variance with [the parties'] common intention"). The judge properly granted summary judgment on this claim.

5. *Resulting trust.* The judge also correctly found that the Maffeis failed to demonstrate a triable issue on their cause of action for a resulting trust. A resulting trust may be imposed to enforce a conditional gift. It typically occurs where "a transfer of property is made to one person and the purchase price is paid by another; in such a case a trust results in favor of the person who furnished the consideration." *Meskell v. Meskell,* 355 Mass. 148, 150, 243 N.E.2d 804 (1969). Unlike a constructive trust, a resulting trust pivots on the key element of intention. The party who furnishes consideration must not intend to do so as "a gift or advancement" to the one who takes legal title to the property. See *Fortin v. Roman Catholic Bishop of Worcester, supra* at 789, 625 N.E.2d 1352; *Lewis v. Mills,*

32 Mass.App.Ct. 660, 663, 593 N.E.2d 1312 (1992). See also 5 A.W. Scott & W.F. Fratcher, Trusts § 462.1 (4th ed.1989). Moreover, a "resulting trust must arise, if at all, at the time of the execution of the deed." *Fortin v. Roman Catholic Bishop of Worcester, supra,* quoting *Dwyer v. Dwyer,* 275 Mass. 490, 494, 176 N.E. 619 (1931).

The Maffeis' case for a resulting trust is infirm in several respects. First, their contention that the property was given as a "conditional gift" is belied by the clear and unambiguous words of the deed, which the Maffeis do not claim they had no opportunity to read prior to signing before a notary. See *Fortin v. Roman Catholic Bishop of Worcester, supra.* Second, they have not advanced any evidence that, at the time the deed was executed "for consideration paid," the parties intended anything other than a complete transfer of all legal and beneficial interest in the property from the Maffeis to the RCAB. Neither the verified complaint nor Catherine's sworn statement alleges that anyone told Reverend Lord that the family required, or even expected, the property to be deeded back to them if it were no longer used as a church. The judge did not err in granting summary judgment to the RCAB on this claim.

6. *Breach of contract.* Summary judgment was appropriate on the Maffeis' breach of contract claim. We have noted the deed's completeness and lack of ambiguity. Moreover, the terms of the alleged oral contract were never reduced to writing and the Maffeis are thus barred from seeking to enforce the oral

agreement by the Statute of Frauds. See *Michelson v. Sherman*, 310 Mass. 774, 775, 39 N.E.2d 633 (1942) (oral contract for purchase of real estate cannot be enforced against party thereto unless party or party's agent has signed written memorandum reciting essential terms with reasonable certainty); G.L. c. 259, § 1.[29]

The Maffeis nevertheless argue that the RCAB is estopped from asserting the Statute of Frauds based on "facts . . . similar" to those of *Cellucci v. Sun Oil Co.*, 2 Mass.App.Ct. 722, 320 N.E.2d 919 (1974), *S.C.*, 368 Mass. 811, 331 N.E.2d 813 (1975).[30] We disagree. It is sufficient to note that the RCAB is shown to have paid a fairly negotiated price for the property and that the record is

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29. General Laws c. 259, § 1, provides, in relevant part: "No action shall be brought . . . [u]pon a contract for the sale of land, tenements or hereditaments or of any interest in or concerning them . . . [u]nless the promise, contract or agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or by some person thereunto by him lawfully authorized."

30. Estoppel may prevail against a Statute of Frauds defense where the litigant claiming estoppel proves: "(1.) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made. (2.) An act or omission resulting from the representation, whether actual or by conduct. . . . (3.) Detriment to such person as a consequence of the act or omission." *Cellucci v. Sun Oil Co.*, 2 Mass.App.Ct. 722, 728, 320 N.E.2d 919 (1974), *S.C.*, 368 Mass. 811, 331 N.E.2d 813 (1975), quoting *Industrial Bankers of Mass., Inc. v. Reid, Murdoch & Co.*, 297 Mass. 119, 124, 8 N.E.2d 19 (1937).

devoid of any evidence that the parties agreed that the property would revert to the Maffeis if it were no longer the site of a church. Estoppel is not warranted. The RCAB was entitled to summary judgment on the contract claim.

7. *The Maffeis' negligent misrepresentation claim.* A defendant is liable for negligent misrepresentation if "in the course of his business . . . [he] supplies false information for the guidance of others in their business transactions" on which the others justifiably rely, " 'if he fails to exercise reasonable care or competence in obtaining or communicating the information.' " *Fox v. F & J Gattozzi Corp.*, 41 Mass.App.Ct. 581, 587, 672 N.E.2d 547 (1996), quoting Restatement (Second) of Torts § 552(1) (1977). The Maffeis' action for negligent misrepresentation rests on allegations that the RCAB failed to exercise reasonable care by not informing the Maffeis about the possibility of suppression, and that the RCAB was negligent in preparing a deed that did not reflect the actual terms of the parties' agreement that the property would revert to the Maffeis if it no longer held a church. The First Amendment, as we have discussed, prohibits us from addressing the first averment; the lack of any evidentiary support in the record, as we have also discussed, dooms the second allegation. The judge did not err in granting summary judgment on this claim.

8. *Hanafin's negligent misrepresentation claim.* Hanafin claims that the RCAB acted negligently in failing to inform Reverend Vartzelis of its plans to close

St. James when it knew he would be soliciting funds in 2002 to sustain the church "now and for the future." The claim cannot be sustained. First, as the judge noted, there is no evidence that Reverend Vartzelis used Hanafin's donation for anything other than his stated purpose: to refurbish St. James. Second, Hanafin has not shown that Reverend Vartzelis failed to exercise reasonable care or competence in using the phrase "for the future" in soliciting funds. See *Fox v. F & J Gattozzi Corp., supra.* Indeed, Reverend Vartzelis solicited funds to refurbish St. James in 2002. As to the RCAB, it was not until January, 2004, that the Wellesley-Weston "cluster" recommended closing St. James, and not until October, 2004, that St. James was suppressed. There is, in short, no evidence that, in June, 2002, Reverend Vartzelis knew that the St. James would be suppressed two years later after a lengthy review process, although he and, presumably, Hanafin, were aware of rumors about St. James's closure as early as 1999. Hanafin's negligence action was properly dismissed on summary judgment.

Judgment affirmed.

APPENDIX B — MEMORANDUM OF DECISION AND ORDER FOR JUDGMENT ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT OF THE COMMONWEALTH OF MASSACHUSETTS DATED MARCH 24, 2006

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss: **SUPERIOR COURT**
CIVIL ACTION NO:
MICV2005-02019-B

CATHERINE R. MAFFEI, INDIVIDUALLY & OTHERS,[1]

vs.

ROMAN CATHOLIC ARCHBISHOP OF BOSTON, SEAN PATRICK O'MALLEY, AS CORPORATION SOLE

MEMORANDUM OF DECISION AND ORDER FOR JUDGMENT ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiffs Catherine R. Maffei ("Catherine Maffei"), and Catherine R. Maffei and Maureen Maffei, as trustees of the Waldo M. Maffei Revocable Trust (the "Revocable Trust"), bring this action against defendant Roman Catholic Archbishop of Boston, Sean Patrick O'Malley,

1. Catherine R. Maffei and Maureen Maffei, as Trustees of the Waldo M. Maffei Revocable Trust, and Eileen Hanafin.

a Corporation Sole ("RCAB") for declaratory and injunctive relief (Count I), breach of contract (Count II), equitable enforcement of a conditional gift (Count III), breach of fiduciary duty (Count IV), and negligent misrepresentation (Count V); plaintiff Eileen Hanafin ("Hanafin") brings this action against RCAB for negligent misrepresentation (Count VI). The matter is before this court on RCAB's Motion for Summary Judgment and plaintiffs' Cross-Motion for Summary Judgment as to all counts pursuant to Mass. R. Civ. P. 56. For the following reasons, RCAB's Motion for Summary Judgment is ***ALLOWED*** and plaintiffs' Cross-Motion for Summary Judgment is ***DENIED.***

I. BACKGROUND

The following are the undisputed facts as gleaned from the summary judgment record. James Maffei and his family lived in Natick, Massachusetts. During his lifetime, James Maffei purchased a tract of land on the southerly side of Worcester Road, Wellesley, Masschusetts ("the property"). James Maffei passed away in 1937, and his wife, Angela, passed away in 1943. The title to the property passed in equal shares to their children, Waldo M. Maffei, Andrew L. Maffei, Peter Maffei, Warren M. Maffei, James V. Maffei and Mary F. Maffei as tenants in common.

In 1946, there were two Catholic churches in Wellesley, one of which was St. Paul Parish. Rev. Robert H. Lord, Ph.D ("Rev. Lord") was the Pastor at St. Paul Parish. In 1946, Rev. Lord wrote to Rt. Rev. Jeremiah F.

Minihan, D.D., Chancellor of the Archdiocese, and described the need for a new church building for the growing population of Wellesley and adjacent Natick. He believed that eight acres of the property on Worcester Road in Wellesley would be the proper location for the building of a new church.

Rev. Lord went to Waldo Maffei twice and asked that he donate eight acres of the property to RCAB. Catherine Maffei recalls that Waldo Maffei told Rev. Lord that he and his sister "don't want anything" in return for the property, but Waldo's four brothers felt differently. Waldo Maffei asked his brothers if they would donate the land to RCAB, and they declined. Rev. Lord went to Waldo Maffei a third time and offered to pay each of the four brothers $3,000.

Rev. Lord allegedly represented to Waldo Maffei that the property would always be used as a church in the memory of James Maffei by naming the church "St. James." The plaintiffs have offered no written evidence of this alleged agreement. The only person who was both present for the conversation and who is still alive is Catherine Maffei.

All of the Maffei siblings agreed to this transfer. RCAB granted Rev. Lord permission to proceed with the transaction. RCAB's attorney prepared a deed. The Maffei family, however, did not hire an attorney.

Rev. Lord brought the deed to the home of Waldo Maffei. The deed makes no reference to the alleged

naming of the church in honor of James Maffei, an alleged oral agreement regarding the use of the property as a church forever, or regarding any reservation of rights to reenter or retake the property. Waldo Maffei and his sister and brothers read the deed and then signed it in front of a Notary Public.

After execution of the deed, RCAB constructed Saint James the Great Church ("St. James") on the property. From the moment St. James opened, Waldo and Catherine Maffei were active members of St. James who contributed time, effort, and finances over the course of several decades.

In June 2002, Rev. George D. Vartzelis ("Rev. Varzelis"), then the Pastor at St. James, sent a circular to the parishioners of St. James. In this circular, Rev. Vartzelis sought financial contributions for "refurbishing to keep [St. James] as good as it needs to be and as we all want it to be now and for the future." The total estimated cost of the refurbishing projects was $35,000. Hanafin, a long-standing member of St. James, donated $35,000 to St. James for the refurbishing projects.

On October 31, 2004, RCAB suppressed[2] St. James,

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2. "To 'suppress' a parish means to end its existence. Canon 515 § 2 governs the creation, altering of suppression of a parish." Affidavit of Rev. Mark O'Connell, J.C.D., Assistant to the Moderator of the Curia of the Archdiocese of Boston, para. 12.

in accordance with Canon Law.[3] As such, the property will no longer be used for a church.

II. DISCUSSION

A. Standard of Review

Summary judgment shall be granted where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); *Cassesso v. Comm'r of Correction*, 390 Mass. 419, 422 (1983). The moving party bears the burden of affirmatively demonstrating the absence of a triable issue, and that the summary judgment record entitles the moving party to judgment as a matter of law. *Pederson v. Time, Inc.*, 404 Mass. 14, 16-17 (1989). The moving party may satisfy this burden either by submitted affirmative evidence that negates an essential element of the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of his case at trial. *Flesner v. Technical Communications Corp.*, 410 Mass. 805, 809 (1991); *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 716 (1991).

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3. Plaintiffs deny this statement by noting the statement in their Verified Complaint which reads, "The Friends of St. James have further appealed to the Vatican." This court accepts as true the fact that RCAB suppressed St. James. Whether the suppression is in accordance with Canon Law is a matter for the Vatican and not the Superior Court of Massachusetts.

Appendix B

B. Jurisdiction

A preliminary and brief discussion of the authority of this court to analyze the matters in this case without offending principles of the First Amendment is necessary. It would be an impermissible intrusion into ecclesiastical authority for this court to inquire into a Bishop's promise to keep a parish open or to merge it with another parish. *Fortin v. Roman Catholic Bishop of Worcester*, 416 Mass. 781, 785 (1994), citing *Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich*, 426 U.S. 696, 708-709 (1976). However, there are situations where neutral principles of statutory and case law may be applied to property disputes. *Id.* at 786. In disputes concerning hierarchical churches, such as the Catholic Church, a court must "tread more cautiously" because the First Amendment permits hierarchical churches to create their own tribunals for adjudicating disputes. *Id.* at 786-787. Therefore, this Court shall tread cautiously in its analysis of this property dispute.

C. Count I — Declaratory Judgment

1. Charitable Trust

Catherine Maffei and the Revocable Trust seek declaratory judgment that the alleged agreement between RCAB and the Maffei family was that RCAB would pay the Maffei family $12,000.00 for the right to use the property solely for a church in the name of James Maffei. There are several theories of property law into which Catherine Maffei and the Revocable Trust attempt

to fit their circumstances, with each, they argue that the property should revert back to them.

The first of the theories is that the Maffei family gave RCAB the property in trust. This theory fails because the plaintiffs lack standing to enforce the alleged trust. "The attorney general shall enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof." G.L. c. 12 , § 8. It is well-settled law in Massachusetts that a gift to a religious institution constitutes a public charity. *Sears v. Attorney General*, 193 Mass. 551, 555 (1907); *Osgood v. Rogers*, 186 Mass. 238, 241 (1904), citing *Teele v. Bishop of Derry*, 168 Mass. 341 (1897). The attorney general bears the responsibility of ensuring that charitable trusts and gifts are administered according to the terms of the trust or gift. *Weaver v. Wood*, 425 Mass. 270, 275 (1997). The attorney general performs the "exclusive and discretionary role as a protector of the public interest in the efficient and lawful operation of charitable corporations." *Id.* at 276, quoting *Lopez v. Medford Community Ctr.*, 384 Mass. 163, 167 (1981).

Generally, individuals do not have standing to bring claims to enforce charitable trusts. *Shattuck v. Wood Memorial Home*, 319 Mass. 444, 450 (1946). Nevertheless, there are limited circumstances when an individual enjoys a unique interest in the charitable trust, which warrants a private cause of action. *Weaver*, 425 Mass. at 277. One such unique interest, for example, is the ability to exercise a right to vote on some matter in

the public charity. *Id.* If the charity prevents individuals from exercising such rights, then a private cause of action exists to the extent of the individuals' unique rights. *Id.* Here, the plaintiffs' interest in the property at issue is limited to their interest as members of the Parish. Mere membership in an organization or church is insufficient as a matter of law to claim some unique benefit from the charity. *Id.* Therefore, they lack standing to bring claims to enforce the alleged charitable trust.

2. Defeasible Fees

Catherine Maffei and the Revocable Trust seek a declaration of rights that upon RCAB's termination of the use of the property for a church, the property reverts to the Maffei family. First, they ask this court to declare that RCAB received the property in either fee simple determinable or fee simple subject to a condition subsequent. A conveyance of a fee simple absolute plus "a provision for the automatic expiration of the estate on the occurrence of a stated event" creates a fee simple determinable. *Queler v. Skowron*, 438 Mass. 304, 310-311 (2002), quoting *Selectmen of Provincetown v. Attorney Gen.*, 15 Mass. App. Ct. 639, 644-645 (1983). A fee simple subject to condition subsequent differs from a fee simple determinable in that entry is necessary to terminate the fee upon occurrence of the stated condition. *Id.*, citing Restatement of Property, § 45. Mere recital of the purpose for which land is to be used is insufficient to create either a fee simple determinable or a fee simple subject to a condition subsequent. *Selectmen of Provincetown*, 15 Mass. App. Ct. at 645.

In this case, the deed is silent as to the purpose for which the property was to be used; on the face of the deed, the property belongs to RCAB in fee simple absolute. Even if this court were to assume that the alleged oral agreement between Rev. Lord and the Maffei family took place, at most the alleged agreement constitutes mere words of hope, wish and desire that the property be used as a church. Notably, Catherine Maffei and the Revocable Trust allege that the Maffei family was unaware that RCAB had the authority to suppress the church which was ultimately constructed on the property. Catherine Maffei and the Revocable Trust fail to allege that the deed expressed the language necessary to retain a possibility of reverter or a reversionary interest in the property. Therefore, this court shall not declare that RCAB held the property in fee simple determinable or in fee simple subject to a condition subsequent.

Further, any person who claims a right of entry that accompanies a fee simple subject to condition subsequent created before January 2, 1955 must file a written statement thereof in the appropriate registry of deeds before January 1, 1964. G.L. c. 260, § 31A. *Howson v. Crombie Street Congregational Church*, 412 Mass. 526, 528 (1992). Because the Maffei family conveyed the property before 1955 and there is no written record of the right of entry filed in any registry of deeds before 1964, this court shall not declare that RCAB held the property in fee simple subject to a condition subsequent.

Appendix B

3. Constructive Trust

Catherine Maffei and the Revocable Trust seek the court's imposition of a constructive trust for Rev. Lord's alleged oral representation that the property would always be used as a church. In this case, Catherine Maffei and the Revocable Trust allege no express trust instrument; they allege an oral agreement with Rev. Lord. As such, any trust must be implied by law. *Yamins v. Zeitz*, 322 Mass. 268, 271-272 (1948). A court may impose a constructive trust if it finds that the principals of unjust enrichment impose a duty on one party to convey the property to the other party. *Id.* at 272. This duty arises where there was fraud in conveying the property, or when there was a breach of fiduciary duty, either express or by a confidential relationship between the parties. *Id.* A court may also impose a constructive trust when mistake would effect unjust enrichment. *Fortin*, 416 Mass. 781, 789 (1994), citing *Nessralla v. Peck*, 403 Mass. 757, 762-763 (1989).

4. Constructive Trust — fraud/misrepresentation

Catherine Maffei and the Revocable Trust allege both that Rev. Lord secured the property through his misrepresentation that the property would always be used as a church and that Rev. Lord breached a fiduciary duty to them by failing to disclose to the Maffei family that RCAB had the legal right to suppress the church.

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Catherine Maffei and the Revocable Trust cannot successfully argue that a trust should be implied by law due to Rev. Lord's alleged fraud because they fail to allege that Rev. Lord had no intention of using the property as a church forever. *See Stevens v. Nagel*, 64 Mass. App. Ct. 136, 138 (2005). Further, this statement was not susceptible of actual knowledge because RCAB has the authority to suppress churches. *Powell v. Rasmussen*, 355 Mass. 117, 118-119 (1969) (finding that a claim of deceit exists only when the statement is one of fact, which was susceptible of actual knowledge).

Catherine Maffei and the Revocable Trust argue that Rev. Lord's failure to expressly state that RCAB has the authority to suppress churches constitutes actionable misrepresentation in that Rev. Lord and RCAB had superior knowledge regarding Canon Law. However, RCAB's authority to suppress churches does not qualify as a future event about which RCAB or Rev. Lord had superior knowledge for purposes of a claim of misrepresentation because the Canon Law was neither confidential nor did RCAB maintain exclusive control over that information. Contrast with *Gopen v. American Supply Co.*, 10 Mass. App. Ct. 342, 345 (1980) (noting the reasonableness of finding superior knowledge where the representation concerned the internal finances over which the party had exclusive control). Therefore, this court shall not impose a constructive trust for fraud or misrepresentation.

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5. Constructive Trust — breach of fiduciary duty

Catherine Maffei and the Revocable Trust also fail to allege facts sufficient to support a breach of fiduciary relationship that would warrant the imposition of a constructive trust. Certain relationships are always fiduciary in nature, as a matter of law: attorney-client, trustee-beneficiary, director-corporation, and guardian-ward. *Doe v. Harbor Schools, Inc.*, 63 Mass. App. Ct. 337, 346 (2005) citing *Markell v. Sidney B. Pfeifer Foundation, Inc.*, 9 Mass. App. Ct. 412, 442 (1980). Additionally, fiduciary relationships may arise as a matter of fact when "one party desires a benefit or service from another party which requires [the first party] to entrust power to the other party." *Id.* The Commonwealth of Massachusetts has yet to recognize a fiduciary relationship that arises between adult parishioners and their pastors, priests, or religious institutions. Further, "[a] person cannot create obligations on the part of another by merely trusting the other." *Yamins*, 322 Mass. at 273. Even if this court were to describe the relationship between the Maffei family and Rev. Lord as fiduciary, the transaction for the sale of land in this case falls well outside the scope of any alleged fiduciary relationship between the two parties. While the Maffei family may have understandably placed great religious and spiritual trust in Rev. Lord, this court will not infer that the scope of that trusting relationship encompassed the sale of eight acres of land. As a matter of law, the facts presented by the summary judgment record fail to indicate that

Catherine Maffei and the Revocable Trust have any reasonable expectation of proving a breach of fiduciary duty. Therefore, this court shall not impose a constructive trust on the land for any alleged breach of fiduciary duty.[4] Similarly, RCAB's motion for summary judgment is allowed as to the breach of fiduciary duty claim.

6. Constructive Trust — mistake

Catherine Maffei and the Revocable Trust allege in their breach of contract claim that Rev. Lord and the Maffei family "may have entered into the [alleged] Agreement under a Mutual Mistake as to whether [RCAB] could terminate the use of the [property] as a Church. As Catherine Maffei and the Revocable Trust set forth no factual allegations in the summary judgment record to show that Rev. Lord mistakenly believed that RCAB lacked the authority to suppress churches, they have no reasonable expectation of proving *mutual* mistake at trial. Therefore, this court shall not impose a constructive trust on the basis of the alleged mistake.

D. Count II — Breach of Contract

The breach of contract claim in this case must fail because the Statute of Frauds precludes enforcement of

4. Without a constructive trust imposed by law, any alleged oral agreement that the land shall be in trust fails because of the operation of G.L. c. 203, § 1. ("No trust concerning land, except such as may arise or result by implication of law, shall be created or declared unless by a written instrument signed by the party creating or declaring the trust or by his attorney.")

any alleged agreement relating to the property at issue. The Statute of Frauds provides, in pertinent part, that "[n]o action shall be brought . . . upon a contract for the sale of lands ... or any interest concerning them ... [u]nless the promise, contract or agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith . . ." G.L. c. 259, § 1; *Schwanbeck v. Federal-Mogul Corp.*, 412 Mass. 703, 709 (1992). "Unless the writing, considered alone, expresses the essential terms with sufficient certainty to constitute an enforceable contract, it fails to meet the demands of the statute. Accordingly, where the Statute of Frauds, rather than the parol evidence rule is invoked, it follows that recovery may not be predicated upon parol proof of material terms omitted from the written memorandum, even though the oral understanding is entirely consistent with, and in no way tends to vary or contradict, the written instrument." *Simon v. Simon*, 35 Mass. App. Ct. 705, 711 (1994). The limitation on the use of the property or a reversionary interest are essential terms to any alleged oral agreement regarding use of the property as a church forever. As the deed lacks those terms, the oral agreement is insufficient to meet the Statute of Frauds' requirements.

Principles of estoppel do not prevent RCAB from asserting the Statute of Frauds defense. Estoppel exists where (1) a party makes a representation with the intent to induce a course of conduct by the party to whom the representation is made; (2) the representation results in an act or omission; and (3) the act or omission results

in a detriment to the party to whom the representation was made. *Cellucci v. Sun Oil Co.*, 2 Mass. App. Ct. 722, 728 (1974). In *Cellucci*, the court based its decision on the fact that the plaintiff lost the opportunity to negotiate a sale with the defendant's competitor in reliance on the defendant's assurances that the sale would be accomplished. *Id.* at 729. See also *Simon*, 35 Mass. App. Ct. at 711-712 (1994) (where the plaintiffs' detriment was risking their home and savings plus twice agreeing to reduced financial benefits in reliance on the oral representations that they would have an option to purchase in the future).

In this case, Catherine Maffei and the Revocable Trust allege that Waldo Maffei's brothers wanted to be paid for the property. Each brother was paid $3,000 as requested. The record shows Waldo Maffei was prepared to give his interest in the property before Rev. Lord's alleged representations about the property being forever used as a church. The first two visits and requests from Rev. Lord were described as unsuccessful because the other four Maffei brothers desired payment for the property. According to Catherine Maffei's statement under oath, Waldo Maffei told Rev. Lord that he and his sister "don't want anything" in exchange for the property. Therefore, this court shall not estop RCAB from asserting the defense of the Statute of Frauds. As such, no cause of action arises from the alleged oral agreement regarding the use of the property. Therefore, RCAB's motion for summary judgment as to the breach of contract claim shall be allowed.

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E. Count III — Resulting Trust

A resulting trust only exists when one person pays consideration for and intends to benefit from property, but another person takes title for some incidental reason. *Lewis v. Mills*, 32 Mass. App. Ct. 660, 664 (1992). Although a resulting trust may be implied when the payor takes title along with another grantee, this occurs only when "there was no intention on the part of the payor to create any beneficial interest in the other grantee." *Id.* at 665-666. In this case, RCAB paid consideration for the property, took title to the property in its own name, and benefited from the property. These are not circumstances whereby a resulting trust for the benefit of Catherine Maffei and the Revocable Trust exists. Therefore, RCAB's motion for summary judgment as to the claim for a resulting trust shall be allowed.

F. Count IV — Breach of Fiduciary Duty

As discussed above, Catherine Maffei and the Revocable Trust fail to allege facts sufficient to find breach of a fiduciary duty. Therefore, RCAB's motion for summary judgment as to the breach of fiduciary duty claim shall be allowed.

G. Counts V and VI — Negligent Misrepresentation

The plaintiffs in this case must show that they reasonably relied on false information that Rev. Lord negligently provided to them, and that their reliance

resulted in harm. *Gianocostas v. Riu Hotels, S.A.*, 59 Mass. App. Ct. 753, 758 n. 9 (2003), quoting Restatement (Second) of Torts, § 311 (1965). However, as Waldo Maffei did not rely on any alleged representations by Rev. Lord regarding the use of the property, the alleged misrepresentations could not have altered the course of Waldo Maffei's conduct. Waldo Maffei would have given the property to the church regardless of any alleged representations of the future use of the property, as it is undisputed that he stated he and his sister "didn't want anything" for the property.

Hanafin alleges that she relied on Rev. Vartzelis' letter to the parishioners of St. James, which stated that $85,000 was necessary for "refurbishing [of the building] to keep it as good as it needs to be and as we all want it to be for now and for the future." In her alleged reliance on the phrase, "for the future," Hanafin donated $35,000 for the renovations. There is no allegation that the letter contained false information to the extent that there is no allegation that the money was not used for renovations and refurbishing St. James. Further, there is no allegation that Rev. Vartzelis had specific knowledge that St. James would possibly be closed in the future. Nor is there any allegation that Rev. Vartzelis through incompetence or failure to exercise due care used the phrase "for the future." *DeLuca v. Jordan*, 57 Mass. App. Ct. 126, 136 (2003) (noting that liability for negligent misrepresentation turns on whether defendants provided false information because of incompetence or a failure of due care). Hanafin characterizes the use of the phrase "for the future" as "misleading" in that RCAB

was allegedly considering closing St. James at that time. The summary judgment record lacks any evidence of negligent misrepresentation. Therefore, RCAB's motion for summary judgment as to the negligent misrepresentation claims by Catherine Maffei and the Revocable Trust and by Hanafin shall be allowed.

III. ORDER

For the foregoing reasons, it is hereby ***ORDERED*** that defendant Roman Catholic Archbishop of Boston's Motion for Summary Judgment be and hereby is ***ALLOWED*** and plaintiffs Catherine Maffei, Trustees of the Waldo M. Maffei Revocable Trust, and Eileen Hanafin's Cross-Motion for Summary Judgment be and hereby is ***DENIED*** as to Count I, Count II, Count III, Count IV, Count V, and Count VI.

DATED: March 24, 2006

By the Court

s/ H.J. Smith, Jr.
H.J. Smith, Jr.
Justice of the Superior Court

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No. 07-558

IN THE

Supreme Court of the United States

CATHERINE R. MAFFEI, *et al.*,

Petitioners,

v.

ROMAN CATHOLIC ARCHBISHOP OF BOSTON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Petitioners have presented compelling reasons to grant the Petition for a Writ of *Certiorari*, where the Massachusetts Supreme Judicial Court's ("SJC's") Opinion affirming the Middlesex (Massachusetts) Superior Court's ("Superior Court's") dismissal of Petitioners' claims does not conflict with a decision of this Court, or a Court of Appeals, or other State Courts, and where the SJC's Opinion does not implicate an important federal question that has not been settled by this Court.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent, Roman Catholic Archbishop of Boston, a Corporation Sole, does not have a parent corporation and there is no publicly held company that owns 10% or more of its stock.

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STATEMENT OF THE CASE

Petitioners have presented no "compelling reasons" for their Petition for a Writ of *Certiorari* ("Petition") to be granted. Specifically, Petitioners fail to demonstrate that the Commonwealth of SJC's July 24, 2007, Opinion is in conflict with decisions of this Court, other state courts of last resort, or a Court of Appeals; or that the SJC decided an important federal question that has not been settled by this Court.[1] The SJC held that insofar as Petitioners' causes of action were predicated on the alleged fiduciary or confidential relationship between a member of the Roman Catholic Church clergy and his congregants, their claims raised matters of internal church governance which a civil court is precluded from considering pursuant to the First Amendment to the United States Constitution.[2] Consistent with the First Amendment, a court may not inquire into any alleged pastoral duties owed by the Roman Catholic priesthood to its laity concerning matters of Canon Law.[3]

[1] *See* Sup. Ct. R. 10(a)-(c).

[2] The First Amendment to the United States Constitution states, in relevant part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

[3] *See*, e.g., *Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich*, 426 U.S. 696, 710, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976); *Fortin v. Roman Catholic Bishop of Worcester*, 416 Mass. 781, 785, 625 N.E.2d 1352, *cert. denied*, 511 U.S. 1142, 114 S. Ct. 2164, 128 L. Ed. 2d 887 (1994).

I. Procedural History

Petitioners filed a six-count verified complaint on June 8, 2005, with the Superior Court.[4] They subsequently moved for *lis pendens* on the property at issue and for a speedy trial. Respondent moved to dismiss the complaint pursuant to Mass. R. Civ. P. 12(b)(6). The judge denied Respondent's motion to dismiss and allowed Petitioners' motion for *lis pendens* and motion for a speedy trial. Thereafter, all parties moved for summary judgment. The Superior Court granted summary judgment in favor of Respondent, and denied summary judgment with regard to Petitioners. Petitioners applied for and were granted direct appellate review by the SJC. The SJC on May 25, 2007, issued its decision affirming the judgment of the Superior Court. Petitioners filed a petition for rehearing. On July 24, 2007, the SJC issued amendments to its decision, and otherwise denied the petition for rehearing. The amendments to the Court's opinion are noted in the decision of the SJC at 449 Mass. 235 (2007).

[4] Count I sought declaratory and injunctive relief to, among other things, declare the alleged oral agreement between the RCAB and the Maffei family enforceable, and for reversion of the property to the family; Count II sought to impose a resulting trust on the RCAB in the Maffeis' favor to enforce a conditional gift; Count III was a claim by the Maffeis for "breach of fiduciary duty and constructive trust"; Count IV was the Maffeis' breach of contract claim; Count V, their claim for negligent misrepresentation; and Count VI, Petitioner Hanafin's claim for negligent misrepresentation.

II. Statement of the Facts

The facts are taken from uncontested material of record, as viewed in a light most favorable to the Petitioners.[5] Respondent, Roman Catholic Archbishop of Boston, a Corporation Sole, was incorporated by the Massachusetts Legislature in 1897, and empowered, among other things, to "receive, take and hold, by sale, gift, lease, devise or otherwise, real and personal estate of every description, for religious, charitable and burial purposes, and to manage and dispose of the same for the religious and charitable purposes of the Roman Catholic church."[6] In the 1940's, Reverend Robert H. Lord of St. Paul's Parish in Wellesley sought permission from Respondent to purchase land to establish a church to serve the needs of the growing Roman Catholic population in Natick and Wellesley, Massachusetts. Respondent approved the request, and Rev. Lord began searching for a suitable location for the new church. He identified a tract of approximately eight acres of land in Wellesley as "the best site – and, indeed, the only good site-for such a church."[7] The land was held in equal shares as tenants in common by the six children of James Maffei.

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[5] The evidence contained in the summary judgment record consisted of the Petitioners' Verified Complaint and a statement given under oath by Petitioner Catherine Maffei.

[6] Mass. St. 1897, c. 506, § 2.

[7] *Maffei, et al. v. Roman Catholic Archbishop of Boston*, 449 Mass. 235, 238, 867 N.E.2d 300 (2007).

In 1946, Reverend Lord had several conversations with one of James Maffei's sons, Waldo Maffei, in Waldo's home during which he inquired about the Maffei family donating the property to the Respondent for use as the site of a church. The conversations purportedly occurred in the presence or within the hearing of his wife, Petitioner Catherine Maffei. According to a "statement under oath" that Ms. Maffei gave to her attorneys in May, 2005, Reverend Lord came to the Maffei house several times to explore obtaining the property for use as a church. Waldo thereafter contacted his sister and four brothers about Respondent's request to donate the land, but the four brothers rejected the request. On the third visit to Waldo's home, in the presence of Catherine, Reverend Lord allegedly told Waldo that the church would be named "St. James" in honor of Waldo's father, and that the church would remain a tribute to James "forever." He also told Waldo that the Respondent would pay each of the other four Maffei brothers $3,000 to transfer their respective interests in the property. According to Catherine, who is the sole surviving participant of these events,[8] during negotiations for the property Reverend Lord did not inform any members of the Maffei family that Canon Law permitted the possible closure of the church in the future.

The Maffei family agreed to transfer the property to the RCAB for $12,000 (representing payment of $3,000 to each of Waldo's four brothers). The parties did not enter into a purchase and sales agreement, but executed a deed transferring all legal and beneficial interest in

[8] Reverend Lord died in 1954, and Waldo Maffei died on January 13, 2003.

the property to the RCAB in exchange "for consideration paid." An attorney hired by Respondent prepared the deed, which the Maffei siblings had the opportunity to read and then sign before a notary in Waldo Maffei's home.[9] The spouses of the four married Maffei brothers, Catherine among them, also executed the deed, relinquishing their rights of dower and homestead. The deed, in fee simple absolute, makes no reference to naming the church in honor of James, or any alleged agreement concerning using the property "forever" as a church. The deed contains no reservation of rights or right to enter or retake the property. In 1950, Respondent established St. James as a parish, and by 1958, a new St. James Church was constructed.

In 1999, an article appeared in a local newspaper speculating that the RCAB had included St. James on a list of churches to be closed. Shortly thereafter, Reverend George Vartzelis, then pastor of St. James, informed the parish members that St. James would remain open. In 2002, Respondent launched a capital endowment campaign in which each of its then 368 parishes was to raise a specific amount in donations. St. James's target was $370,000. In conjunction with the capital campaign, Rev. Vartzelis sent solicitation letters to his parishioners requesting funds for the RCAB campaign, and also asked for $35,000 in donations to refurbish St. James "to keep it as good as it needs to be

[9] Although the verified complaint states that counsel hired by Respondent prepared the deed and that the Petitioners were not represented by counsel when they sold the property, Catherine in her sworn statement stated that one of the Maffeis' neighbors, an attorney, prepared the deed at their request and was present when the deed was executed.

and as we all want it to be now and for the future." There is no evidence that Rev. Vartzelis, at the time he made these statements, had any knowledge of plans by the Respondent to close the church. Furthermore, there is no evidence at that time that Respondent had made any decision regarding the future of St. James. Based on Rev. Vartzelis's representation that a gift would benefit St. James "now and for the future," Petitioner Hanafin donated $35,000 to the church. The gift was used for the benefit of St. James Church at the time it was made.

Rev. Vartzelis retired in the spring of 2003, and he was replaced with an administrator, an interim position, rather than with a pastor. In January of 2004, Respondent required geographic grouping of parishes to investigate and report on which parishes in each group might be closed in a "reconfiguration" plan. The group to which St. James belonged reported in their "reconfiguration response" that St. James would be the "most feasible" church to close as it had "the smallest number of recorded families and individuals; the smallest Mass count; the smallest religious education program; and the smallest sacramental index." On October 5, 2004, Respondent issued a decree of suppression of St. James, effective October 31, 2004. The decree reassigned the territory covered by St. James to other parishes, transferred the canonical registers of St. James to another parish, and transferred "the goods and obligations" of St. James to Respondent. Respondent retained legal title to the property.

REASONS FOR DENYING THE PETITION

There exists no conflict between the Opinion of the SJC with decisions of this Court, other state courts of last resort, or a Court of Appeals concerning whether the First Amendment prevents a court from considering the "trust and confidence" which a congregant reposes in a member of the clergy in determining whether there has been a breach of that "trust and confidence". There also exists no conflict between the Opinion of the SJC with decisions of this Court, other state courts of last resort, or a Court of Appeals concerning whether the First Amendment prohibits a court from considering a tenet of a religious order where the matter has not been submitted to an ecclesiastical tribunal. The Opinion of the SJC does not implicate an important federal question that has not been settled by this Court.

I. The Opinion of the SJC does not conflict with a decision of this Court or a Court of Appeals, or other state courts of last resort; and the Opinion of the SJC does not implicate an important federal question that has not been settled by this Court.

A. The Opinion of the SJC Does Not Conflict with Other State Court Decisions Concerning the Court's Consideration of the "Trust and Confidence" which a Congregant May Repose in a Member of the Clergy.

Petitioners argue that the SJC wrongly held that the First Amendment prevents a Court from considering the "trust and confidence" which a Congregant places in a member of the Clergy in determining whether there has

been a breach of trust with respect to the Congregant's gift. In its decision, the SJC held that the First Amendment protects an individual's freedom to worship, or not to worship, as he or she chooses.[10] The Court also held that the First Amendment "places beyond our jurisdiction disputes involving church doctrine, Canon Law, polity, discipline, and ministerial relationships."[11] The SJC further held that is has jurisdiction over property disputes if and to the extent, and only to the extent, that they are capable of resolution under "neutral principles of law" – which this Court has defined as "well-established concepts of trust and property law familiar to lawyers and judges."[12] The SJC held that it is forbidden from ruling upon the religious obligations, if any, of a clergy member to his or her congregants, or of the "trust and confidence" that may be engendered in congregants solely by virtue of the clergy's religious authority.[13]

Petitioners have cited decisions from other state courts which have ruled that the inherent trust between

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[10] *See Maffei* at 243.

[11] *See id.* (*citing Williams v. Episcopal Diocese of Mass.*, 436 Mass. 574, 579, 766 N.E.2d 820 (2002). *See Hiles v. Episcopal Diocese of Mass.*, 437 Mass. 505, 515, 773 N.E.2d 929 (2002); *Wheeler v. Roman Catholic Archdiocese of Boston*, 378 Mass. 58, 61, 389 N.E.2d 966, *cert. denied*, 444 U.S. 899, 100 S. Ct. 208, 62 L. Ed. 2d 135 (1979).

[12] *See Jones v. Wolf*, 443 U.S. 595, 603, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979).

[13] *See Maffei* at 244.

a Congregant and a member of the Clergy may be considered to the extent that a gift or transaction carries a presumption of undue influence and that the burden is imposed upon a spiritual adviser to prove that the donor was free from influence.[14] The SJC held that these cases "concern circumstances of repeated, affirmative false statements by clergy to the plaintiff that would constitute fraud apart from any religious affinity between the parties."[15] The Court did note in its decision that the cases cited by Petitioners do contain statements whereby one who acts in the capacity of "spiritual ascendancy" over a donor has a confidential relationship to the donor that requires the spiritual advisor to justify any gift made to him or her by the donor. However, Petitioners admit that the cited decisions from other state courts were distinguished by the Court in its decision.[16] The Court, after consideration of the cases in question, stated that because those decisions predate the Supreme Court's First Amendment jurisprudence as reflected in *Serbian Eastern Orthodox Diocese for the U.S. & Can. v. Milivojevich*,[17] along with its own precedent in *Fortin*

[14] *Nelson v. Dodge*, 68 A. 2d 51, 57 (Supr. Ct. RI 1949), *Corrigan v. Pironi*, 48 N.J. Eq. 67, 23 Atl. 355 (1891), *Farmer v. O'Carroll*, 162 Md. 431, 160 A. 12, 17, 18 (Ct. App. Md. 1932), and *Brown v. Father Divine et als.*, 173 Misc. 1029, 18 N.Y.S. 2d 544 (Supr. Ct., Special Term, New York County, 1940).

[15] *See Maffei* at 249, n. 24.

[16] *See* Petition for a Writ of *Certiorari* at p. 21.

[17] 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976).

v. Roman Catholic Bishop of Worcester,[18] those cases were not afforded "weighty authority".[19]

Petitioners next argue that the statement by the SJC that the previously cited cases came after this Court's First Amendment jurisprudence reflected in *Serbian* and *Fortin* ignores the decision by the District of Columbia Court of Appeals in *Roberts-Douglas v. Meares*.[20] In *Roberts-Douglas*, the District of Columbia Court of Appeals ruled that in determining whether there was undue influence in connection with a gift from a Congregant, a court could consider the fact that there were threats of divine retribution from the pulpit, particularly where there were similar threats imposed upon the donor on a "one to one" basis. The Court in *Roberts-Douglas* ruled that "to permit someone to engage in activities which would otherwise be proscribed by law, upon the ground that such conduct is required by his or her religion, would make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself." The decision in *Roberts-Douglas* is clearly distinguishable from the SJC's decision. In this case, there are no allegations of threats of divine

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[18] 416 Mass. 781, 625 N.E.2d 1352, *cert. denied*, 511 U.S. 1142, 114 S. Ct. 2164, 128 L. Ed. 2d 887 (1994) (civil courts must accept the decisions of a hierarchical church regarding matters of discipline, faith, internal organization or ecclesiastical rule, custom or law).

[19] *Maffei* at 250, n. 24.

[20] 624 A. 2d 405, 423 (D.C. App. 1992).

retribution by Rev. Lord. If there were threats or intimidation, the case could be decided upon "neutral principles of law", as enumerated in *Jones v. Wolf*. As referenced above, the SJC clearly stated that circumstances involving "repeated, affirmative false statements" by a member of the clergy, such as Rev. Lord, to parishioners, such as the Maffeis "would constitute fraud apart from any religious affinity between the parties",[21] and thus would be reviewable under "neutral principles of law". The SJC carefully considered the facts in the case at bar, and decided that the myriad "inquiries bearing on resolution of the Maffeis' fiduciary claims would take [it] far afield of 'neutral principles of law.'"[22]

Finally, Petitioners claim that the Opinion of the SJC incorrectly applied the principles laid down by this Court in *Serbian E. Orthodox Diocese*. Petitioners are mistakenly relying upon a passage from that case quoting *Watson v. James* which the Petitioners assert limits First Amendment protection to "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried."[23] This Court clearly did not intend to limit First Amendment religious protections with this statement,

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[21] *See Maffei* at 249, n.24.

[22] *See id.* at 250.

[23] *Serbian E. Orthodox Diocese* at 710 (quoting *Watson v. James*, 13 Wall. 679, 727 (1872)); *see also* Petition for a Writ of *Certiorari* at p. 30.

as put forth by Petitioners. On the contrary, this Court intended to limit the role of civil courts in the resolution of religious controversies that incidentally affect matters of common law. In fact, the language immediately following the above quote captures the substance of this Court's reasoning:

"In language having 'a clear constitutional ring,' *Watson* reasoned:"[24]

> "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be

[24] *Id.* at 710 (quoting *Presbyterian Church v. Hull Church*, 393 U.S. 440, 446, 89 S.Ct. 601 (1969)).

binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."[25]

B. The Decision of the SJC Does Not Conflict with a Decision of the United States Second Circuit Court of Appeals with Respect to a Court's Jurisdiction to Consider Ecclesiastical Law.

Petitioners contend that Opinion of the SJC conflicts with a decision by the United States Second Circuit Court of Appeals in *Martinelli v. Bridgeport Roman Catholic Diocese*.[26] In *Martinelli*, the plaintiff, a minor, claimed that he was a victim of sexual assault by a clergyman and that the sexual assault was in violation of the fiduciary relationship between the plaintiff and the Diocese. The Second Circuit upheld the jury's finding that a fiduciary relationship existed between the plaintiff and the Diocese and ruled that in determining whether a fiduciary relationship existed, the First Amendment did not prevent the consideration of religious doctrines and practices. Specifically, the Second Circuit concluded that there was sufficient evidence for a jury to find the existence of a fiduciary relationship between the Bridgeport Roman Catholic Diocese and a former student who, as a minor, had been sexually abused by a

[25] *Id.* at 710-711 (quoting *Watson v. James* at 728-729).

[26] 196 F.3d 409 (2d Cir. 1999).

priest.[27] The plaintiff had been a student at a diocesan school that employed the priest who committed the abuse, and the Second Circuit found that the Diocese knew that the plaintiff had a "special and privileged relationship" with the priest as a result of his membership in a small group of boys mentored by the priest.[28] The Court ruled that the particular facts of that case supported the conclusion that "the Diocese's relationship with [the plaintiff], based on the particulars of [the plaintiff's] ties to [the priest] and the Diocese's knowledge and sponsorship of that relationship, was of a fiduciary nature."[29]

The *Martinelli* decision is distinguishable from the case at bar, as the Second Circuit in *Martinelli* based its finding of a fiduciary relationship not on the general clergy-parishioner relationship, but rather on the plaintiff's particular ties to an abusive priest and the Diocese's knowledge and sponsorship of that relationship. The allegations considered in *Martinelli* clearly distinguish a child's prolonged and extensive involvement with a church as a student and altar boy from an adult who asserts nothing more than general membership in a religious organization, as is the case here. The SJC pointed out that the "fatal flaw" in the Plaintiff's argument that a fiduciary relationship existed between the Maffeis and Rev. Lord is the Maffeis'

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[27] *Id.* at 413, 429-30.

[28] *Id.* at 429.

[29] *Id.*

contention that the relationship was principally a result of their "shared religious affiliation" and nothing more.[30]

II. A definitive ruling by the Supreme Court to determine whether donors to religious institutions have the same rights as donors to other charitable institutions is not appropriate.

Petitioners contend that review by this Court is necessary to resolve the issue of whether religious institutions use gifts from donors for the intended purpose. Petitioners fail to elaborate upon the basis of this claim, leaving one to assume that Petitioners are referring to the gift of $35,000 to St. James parish by Petitioner Hanafin. Petitioners contend that Respondent made a negligent misrepresentation when, in 2002, the pastor of St. James the Great solicited funds for refurbishing the parish for "now and for the future". Petitioners fail to address the fact that the SJC ruled that there was no evidence (1) that the pastor of the parish used Ms. Hanafin's donation for anything other than the stated purpose; and (2) that the pastor failed to exercise reasonable care or competence in using the phrase "for the future" while soliciting funds.

Petitioners also imply that there is no forum for review of gifts to religious institutions. This simply is not so. Chapter 12, Section 8 of the Massachusetts General Laws provides, in pertinent part: "The attorney general shall enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the

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[30] *See Maffei* at 248.

administration thereof." The Massachusetts Attorney General's authority under the statute encompasses charitable "assets" in general as well as charitable "funds".[31]

CONCLUSION

The Petitioners have not established any compelling reasons for this Court to grant the Petition. Therefore, the Respondent respectfully requests that the Petition be denied.

Respectfully submitted,

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[31] *See Weaver v. Wood*, 425 Mass. 270, 275, 680 N.E.2d 918 (1997).

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(3)

No. 07-558

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IN THE

Supreme Court of the United States

CATHERINE R. MAFFEI, individually, and CATHERINE R. MAFFEI and MAUREEN, as trustees of the WALDO M. MAFFEI REVOCABLE TRUST, and EILEEN HANAFIN,

Petitioners,

v.

ROMAN CATHOLIC ARCHBISHOP OF BOSTON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

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United States Constitution:

First Amendment 5, 6, 7

Statutes:

96 U.S.C. § 1964 6

M.G.L.c. 12, Section 8 ..... 1, 5

The Petitioners are submitting this Reply Brief to respond to the following new material or arguments which the Roman Catholic Archdiocese of Boston ("RCAB") in its Brief in Opposition to the Petition for a Writ of Certiorari:

(1) Additional facts which the RCAB submitted in its Opposition;

(2) The Opinion of the Massachusetts Supreme Judicial Court does not conflict with the decisions of other States concerning the Trust and Confidence which Members can Repose in the Clergy;

(3) The Decision of the Second Circuit Court of Appeals in *Martinelli v. Bridgeport Roman Catholic Archdiocese*, 196 F.3d 409 (2d Cir. 1999), which permitted the Court to consider religious teachings and tenets, is limited to a factual situation involving abuse; and

(4) That the United States Supreme Court need not make a ruling as to the rights of donors to religious organizations, as the Commonwealth of Massachusetts Attorney General has the authority to enforce the due application of funds given to public charities, pursuant to M.G.L.c. 12, Section 8.

I. The Facts.

The RCAB states, on page 3 of its Opposition, that its facts are taken from "uncontested material of record, viewed in the light most favorable to the Petitioners," and that the evidence in the summary judgment record consisted of the Petitioner's Verified Complaint and the Statement under Oath of Catherine Maffei. (Opposition, page 3). In fact, the evidence in the Summary Judgment record consisted of the Verified Complaint, which included sixteen exhibits, and Affidavits of Eileen Hanafin, and two Parishioners of St. Bernard's Parish of Newton, Massachusetts, who averred to the facts concerning the visit of Reverend Mark O'Connell to St. Bernard's Parish, set forth on page 14 of the Petition.

While the RCAB states that the facts it sets forth are "viewed in the light most favorable to the Parishioners," the RCAB nevertheless attempts to contradict the Petitioner's averment in the Verified Complaint that the RCAB prepared the deed and that the Maffeis were not represented at the signing of the Deed. The RCAB does so by stating, in its Opposition, that Catherine Maffei stated in her Statement under Oath that one of her neighbors prepared the deed. (Opposition, p. 5, fn. 9). The RCAB does not mention that two of the exhibits set forth on the Verified Complaint were instructions of the RCAB's Chancellor to Reverend Lord directing him to contact the RCAB's attorney to prepare the legal documents.

Finally, the RCAB refers to statistics concerning the attendance at St. James in January, 2004, at the time of devising the "Reconfiguration Plan." (Opposition, p. 9).

However, these statistics were compiled almost six months after the RCAB had replaced St. James's Pastor with an Administrator.

II. The Opinion of the Supreme Judicial Court Conflicts with Opinions of Other State Courts.

The RCAB contends that the Opinion of the Supreme Judicial Court in *Maffei, et al. v. Roman Catholic Archdiocese of Boston*, 449 Mass. 235 (2007), does not conflict with decisions of other state courts, which were cited in the Petition as permitting consideration of the "trust and confidence" which a follower reposes in a member of the Clergy, in determining whether there has been a violation of the "trust and confidence" in the follower's providing a donation or gift. (the discussion of these cases is set forth in the Petition, pages 19-22).

The RCAB attempts to discourage the application of these cases in two ways. The RCAB first states that the Supreme Judicial Court distinguished these cases as involving "'. . . repeated, affirmative false statements by clergy that would constitute fraud apart from any religious affinity between the parties.'" (Opposition, page 9, citing from *Maffei*, page 249, fn. 24; Petition Appendix ("App."), 22a). However, none of the decisions of the other state courts limit their holdings to any arguably "aggravated" facts. Moreover, there are certain facts involved in the present cases, such as the Maffeis' devotion of over fifty years to St. James the Great Church, which are also unique.

The RCAB then argues that most of the decisions of the other state courts predate, and are rendered as questionable authority, by this Court's decision,

Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich, 426 U.S. 696 (1976), which the RCAB construes as prohibiting a state court from considering the relationship and trust between a member of the Clergy and its follower. (Opposition, pages 11-13). However, the *Serbian E. Orthodox* decision does not prohibit the consideration of the relationship and the trust and confidence which a follower reposes in a member of the Clergy; the decision simply states that where a matter is properly decided by an Ecclesiastical tribunal, a civil court must accept the decision as binding. *Serbian East Orthodox*, at pages 724-725.

The decision of the Massachusetts Supreme Court is fundamentally at odds with the decisions of the other State Courts. This Court should allow the Petition in order to rule upon both the Supreme Judicial Court's misapplication of the *Serbian East Orthodox* decision and the conflict between the *Maffei* decision and the decisions of other State Courts concerning whether a civil court can consider the "trust" which a follower reposes in a member of the Clergy in determining whether the "trust" has been violated with respect to a donation or gift.

III. The RCAB Misconstrues the Applicability of the Decision of the Second Circuit of *Martinelli v. Bridgeport Roman Catholic Diocesan Corporation.*

The RCAB correctly states, in its subtitle, that the Petitioners rely on the Decision of the Second Circuit Court of Appeals in *Martinelli v. Bridgeport Roman Catholic Archdiocese*, 196 F.3d 409 (2d Cir. 1999), as

ruling that the First Amendment does not prevent courts from deciding secular civil disputes involving religious institutions when and for the reason that they require reference to religious matters. *Martinelli*, at page 431. (*See* Opposition, page 13).

The RCAB, however, then cites the facts of the *Martinelli* case as involving a physically abusive relationship between a member of the Clergy and a follower, as a reason to refuse to concede the decision's authority. However, the *Martinelli* decision's discussion of the admissibility of the specific religious tenets makes no mention of limiting the admissibility to such circumstances.

IV. This Court Should Determine Whether Donors to Religious Institutions have the Same Rights as Donors to Other Charitable Institutions.

The RCAB justifies its contention that this Court should not determine the rights of Donors to Religious Institutions, by stating that the State Attorney General can seek to enforce gifts to religious or charitable institutions. The RCAB specifically refers to M.G.L.c. 12, Section 8, which authorizes the Attorney General to enforce the due application of funds. (Opposition, page 15). The Supreme Judicial Court, in the *Maffei* decision, held that this statute did not preclude the Plaintiffs from filing their own action. *Maffei*, pages 244-246 (App., 15a-18a). Our legal system is built upon the premise that one should be able to enforce one's own rights. Secondly, even as to statutes which provide for the government to have civil enforcement authority, there is often a provision which permits an aggrieved person to seek relief.

See 96 U.S.C. § 1964, providing for a private person to seek redress for a violation of the Racketeer Influenced and Corrupt Organizations Act.

Furthermore, the same basic issues involved in this Petition, which are whether the "trust and confidence" which a follower reposes in a member of the Clergy, exist regardless of whether enforcement is sought directly by the Donor or by the Attorney General.

With respect to the claim of Eileen Hanafin, who made her donation in 2002 on the representation that the donation was necessary to maintain St. James Church ". . . now and in the future . . . ," the RCAB also contends that the Petitioners have failed to address that the SJC ruled that there was no evidence (1) that the pastor of the parish used Ms. Hanafin's donation for anything other than the stated purpose and (2) that the pastor failed to exercise reasonable care or competence in using the phrase "for the future" while soliciting funds. (Opposition, page 15). However, one must first consider that the claim was based on the averment that the RCAB had the obligation to tell a Parishoner Donor that St. James could be suppressed at any time (*Maffei*, p. 237, App. to Petition, 3a). One must then consider that the SJC, based on its consideration of the First Amendment, could not consider issues of Canon law or whether a member of the clergy had any obligation to inform a Parishoner about Canon law. (*Maffei*, p. 244, App. to Petition, 14a). Then Archbishop O'Malley, at the time he denied the Parishioners of St. James Appeal of the Suppression of the Church, specifically stated that St. James ". . . has long been seen as a place which could possibly close . . ." Whether Reverend Vartzelis knew that closure of St. James was being considered, the RCAB knew, but was nevertheless issuing Fliers for the

Promise for Tomorrow Fund representing that St. James was a "thriving" Parish. Accordingly, if the SJC is in error concerning its construction of First Amendment law, and that there was an obligation of the RCAB to notify a Parishioner that the Church was under consideration for possible closure when soliciting contributions to maintain the Church "... now and in the future ...", then Eileen Hanafin's claim would be revived.

CONCLUSION

The RCAB contends that this Court should not grant the Petition to Review the decision of the Supreme Judicial Court, which essentially states that in the absence of "repeated, affirmative" false statements, there can be no finding of "trust and confidence" by which an aggrieved follower can seek relief for the misapplication of his or her gifts. This Court should grant the Petition and definitively state whether the First Amendment commands this result.

Respectfully submitted,

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